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LEWIS D. BONEBRAKE

COMMISSIONER

OHIO SCHOOL LAWS

IN FORCE APRIL 16, 1900



BLANK FORMS AND DIRECTIONS
TO SERVE AS A GUIDE
FOR SCHOOL OFFICERS

OHIO

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PREFACE.

Section 360 authorizes the state commissioner of common schools to cause as many copies of the laws, as may be necessary, relating to schools and teachers' institutes, with an appendix of appropriate forms, to be printed and distributed when, in his judgment, the same may be necessary. The last edition was prepared in 1897, since which date many important changes have been made, both by the Seventy-third and the Seventy-fourth General Assembly. These changes have been incorporated in the present edition, together with certain sections relating to libraries, colleges and universities, not heretofore included in the editions of the school laws sent out. The citations and decisions of the courts have been made as full and complete as practicable. In a number of instances the opinions of the attorney-general and the commissioner are added where it seemed necessary, or where the courts have not as yet given their interpretation.

School officers will find in the main that the general provisions of the school laws are quite plain and easy of comprehension, especially when read in connection with the notes and decisions found under each section. Officials will be better prepared to discharge their duties by becoming familiar with the various sections and enactments printed herewith. In doing so they should remember that the entire system of schools maintained by the state has as its object the proper education and training of the youth of the commonwealth, and, generally speaking, all school laws should be interpreted in a wise and liberal spirit.

The sections of this edition, by the courtesy of W. H. Anderson & Company, of Cincinnati, are numbered and given as in Bates' Annotated Ohio Statutes. In this connection I wish to acknowledge the painstaking assistance accorded me by Mr. H. H. Cassil and Attorney-General Sheets in the preparation of this edition.

LEWIS D. BONEBRAKE,

State Commissioner of Common Schools.

August 1, 1900.

REFERENCES.

The following is an explanation of the abbreviations used in the sectional notes found in this volume:

Atty. Gen'l.....	Opinion of Attorney General.
B.....	Weekly Law Bulletin.
C. C.....	Ohio Circuit Court Reports.
C. D.....	Ohio Circuit Decisions.
Com.....	Opinion of State Commissioner of Common Schools.
N. P.....	Nisi Prius.
O. D.....	Ohio Decisions.
O.....	Ohio Reports.
O. S.....	Ohio State Reports.
Rec.....	American Law Record.
W. L. M.....	Western Law Monthly.



CONSTITUTION OF OHIO

RELATING TO PUBLIC SCHOOLS.

ARTICLE I.

Sec. 7. [Of the rights of conscience; necessity of religion and knowledge.] * * * Religion, morality and knowledge, however, being essential to good government, it shall be the duty of the general assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

"The system of public education in Ohio is the creature of the Constitution and statutory laws of the state. It is left to the discretion of the general assembly, in the exercise of the general legislative power conferred upon it (Art. II, § 1), to determine what laws are 'suitable' to secure the organization and management of the contemplated system of common schools, without express restriction, except that 'no religious or other sect or sects shall ever have any exclusive right to; or control of, any part of the school funds of this state.'" 21 O. S., 196-205; Day, J.

The compulsory education law comes within this section. 5 C. C., 645.

ARTICLE II.

Sec. 26. [What laws to have uniform operation.] All laws of a general nature, shall have a uniform operation throughout the state; nor, shall any act, except such as relates to public schools, be passed, to take effect upon the approval of any other authority than the general assembly, except, as otherwise provided in this Constitution.

The formation of a special school district from territory within the limits of a township, by special act, is not unconstitutional. Special legislation upon a subject matter in its nature local, is not in conflict with the Constitution, although the subject matter is the subject of a general law. 46 O. S., 275.

ARTICLE VI.

Sec. 1. [Funds for educational and religious purposes.] The principal of all funds, arising from the sale, or other disposition of lands, or other property, granted or intrusted to this state for educational and religious purposes, shall forever be preserved inviolate, and undiminished; and, the income arising therefrom, shall be faithfully applied to the specific objects of the original grant, or appropriations.

Sec. 2. [School funds.] The general assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state; but no religious or other sect,

or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this state.

Religious instruction, or the reading of the Bible in the public schools, is not required by the Constitution. The board of education have the sole management of the schools, and the courts cannot direct what instruction shall be given or what books read. 23 O. S., 211.

A requirement of a board of education that the Bible be read in the schools as an opening exercise cannot be interfered with by the courts, and is not in violation of any constitutional rights. 1 N. P., 140.

It is an unlawful diversion of the school funds of the state of Ohio for a board of education to authorize the teaching of religion as a regular branch of study. Attorney General.

ARTICLE XII.

Sec. 2. [Taxation by uniform rule.] Laws shall be passed, by taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property, according to its true value in money; but burying grounds, public school houses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose, and personal property, to an amount not exceeding in value two hundred dollars, for each individual, may, by general laws, be exempted from taxation; but all such laws shall be subject to alteration or repeal; and the value of all property, so exempted, shall, from time to time, be ascertained and published, as may be directed by law.

School property is not liable to assessment for street improvement; nor can a judgment be rendered against the board of education for the payment of the assessment out of its contingent fund. 48 O. S., 83.

Sidewalk—School property not assessable for. 48 O. S., 87.

INTERPRETATION OF STATUTES.

Sec. 23. R. S. [Interpretation of certain words.] In the interpretation of Parts First and Second, unless the context shows that another sense was intended, the word "bond" includes an "undertaking," and the word "undertaking" includes a "bond"; "and" may be read "or," and "or" read "and," if the sense requires it; words of the present include a future tense, in the masculine, include the feminine and neuter genders, and in the plural include the singular and in the singular include the plural number; but this enumeration shall not be construed to require a strict construction of other words in said Parts, or in this Code.

A construction which gives effect to every section and clause must be favored. 1 O., 381, 385; 2 O., 395, 398; 17 O. S., 52, 68; 3 O., 187, 193; 5 O., 48, 51; 2 O. S., 147, 151.

Each part must harmonize with each other, and a construction of one clause which will neutralize another cannot be correct. 3 O., 187, 193; 2 O., 395, 398; 5 O., 48, 51.

What is plainly implied in a statute is as much a part of it as what is expressed. 50 O. S., 330.

The ordinary and natural import of words consistent with the common sense of the community is to be adopted in arriving at legislative intent. 5 O., 65, 71; 25 O. S., 26, 28.

In considering questions arising under the school legislation of the state, such construction should be placed upon its various enactments, and the several provisions thereof, as will give harmony to our educational system, and secure, as far as practicable, its equal benefits, and the reasonable facilities for their enjoyment to every locality. 21 O. S., 339.

Penal statutes must be construed strictly, and cannot be extended by implication to cases not strictly within their terms. 20 O., 7; 18 O., 11; 38 O. S., 659; 44 O. S., 347.

While the opinion of the state commissioner of common schools cannot have the force of a judicial interpretation, it is of great force as the opinion of an eminent educator, who was at the head of the school system of the state, and presumably familiar with the necessities of the schools. 2 C. C., 366; Stewart, J.

REVISED STATUTES OF OHIO.

PART FIRST—TITLE III.

CHAPTER XIII.

STATE COMMISSIONER OF COMMON SCHOOLS.

SECTION

- 354. State commissioner of common schools; election and term of; proviso.
- 355. Bond.
- 356. His office; books and papers; prohibitions.
- 357. His duties to teachers' institutes, etc.
- 358. His supervision over school funds and school officers.
- 359. Shall prepare and transmit forms and instructions.
- 360. Shall cause school laws, with form, etc., to be printed and distributed.

SECTION.

- 361. Annual report of commissioner of schools.
- 362. What the report shall contain.
- 363. Shall require reports from private schools, etc.
- 364. His duty on complaint of fraudulent use of money; appointment of examiner.
- 365. Powers, duties, and compensation of examiner.
- 366. Duty of judge and prosecuting attorney.

Sec. 354. [State commissioner of common schools; election and term of; proviso.] There shall be elected triennially, at the general election for state officers, a state commissioner of common schools, who shall hold his office for the term of three years from the second Monday of July succeeding his election; and in case of a vacancy occurring by death, resignation, or otherwise, the governor shall fill the same by appointment. Provided, that the state commissioner of schools now in office shall continue to hold his office until three years from the second Monday of July succeeding his election. (1884, March 27; 81 v. 89; Rev. Stat. 1880; 70 v. 195, § 102; S. & C., 1362.)

Appointment of state board of examiners by the state commissioner of common schools; see Sec. 4065.

Sec. 355. [His official bond, and oath.] Before entering upon the discharge of his official duties, the commissioner shall give bond in the sum of five thousand dollars to the state, with two or more sureties, to the acceptance of the secretary of state, conditioned that he will truly account for and apply all moneys or other property which may come into his hands in his official capacity, and that he will faithfully perform the duties enjoined upon him according to law; which bond, with his oath of office indorsed thereon, shall be filed with the treasurer of state. (70 v. 195, § 103; S. & C. 1362.)

Bond of officers, see Sec. 7 R. S.

Sec. 356. [Office; books and papers; prohibitions.] The books and papers of his department shall be kept at the seat of government where a suitable office shall be furnished by the state, at which he shall give attendance not less than ten months in each year, except when absent on public duty; and he shall not, while holding the office of state commissioner of common schools, perform the duties of teacher or superintendent of any public or private school, or be employed as teacher in any college, or hold any other office or position of emolument. (90 v. 13; 70 v. 195, § 104; S. & C., 1362.)

Sec. 357. [His duties in visiting the several judicial districts.] The commissioner shall visit annually, each judicial district of the state, superintending and encouraging teachers' institutes, conferring with boards of education or other school officers, counseling teachers, visiting schools and delivering lectures on topics calculated to subserve the interests of popular education. (70 v. 195, § 105; S. & C., 1362.)

Sec. 358. [His supervision over school funds; may require reports from certain officers.] He shall also exercise such supervision over the educational funds of the state as is necessary to secure their safety and right application and distribution according to law. He has power to require of county auditors, boards of education, clerks and treasurers of boards of education, or other local school officers, and county treasurers, copies of all reports by them required to be made, and all such other information in relation to the funds and condition of schools and the management thereof as he deems important. (70 v. 195, § 106; S. & C., 1362.)

Sec. 359. [Shall prepare forms, etc.] He shall prescribe suitable forms and regulations for making all reports and conducting all necessary proceedings under the school laws, and cause the same, with such instructions as he deems necessary and proper for the organization and government of schools, to be transmitted to the local school officers, who shall be governed in accordance therewith. (70 v. 195, § 107; S. & C., 1363.)

Sec. 360. [Duties as to distribution of school laws, etc.] He shall cause as many copies of the laws as are necessary, relating to schools and teachers' institutes, with an appendix of appropriate forms and instructions for carrying into execution all such laws, to be printed in a separate volume, and distributed to each county with the laws, journals, and other documents, for the use of the school officers therein, as often as any change in the laws is made of sufficient importance, in the opinion of the commissioner, to require a republication and distribution thereof. (70 v. 195, § 108; S. & C., 1363.)

Sec. 361. [Annual report of commissioner of schools.] He shall make an annual report, on or before the fifteenth day of November, to the general assembly, when that body is in session, and when not in session the report shall be made to the governor, who shall cause the same to be published, and shall also communicate a copy thereof to the general assembly at the beginning of the next session. (1888, Apr. 11: 85 v. 192; Rev. Stat. 1880; 70 v. 195, § 109; S. & C., 1363.)

Provisions for printing report; see Sec. 63, R. S.

Sec. 362. [What it shall present.] In his annual report he shall present a statement of the condition and amount of all funds and property appropriated to purposes of education; a statement of the number of common schools in the state, the number of scholars attending such schools, their sex, and the branches taught; a statement of the number of private or select schools in the state, so far as the same can be ascertained, and the number of scholars attending such schools, their sex, and the branches taught; a statement of the number of teachers' institutes, the number of teachers attending them, and the number of instructors and lecturers, and the amount paid to each; a statement of the estimates and accounts of the expenditures of the public school funds of every description; a statement of plans for the management and improvement of common schools, and such other information relative to the educational interests of the state as he deems of importance. (70 v. 195, § 110; S. & C., 1363.)

As to the duty of county auditors in transmitting abstracts of school statistics to state commissioner of common schools; see Sec. 4060.

Sec. 363. [Shall require reports from private schools, etc.] He shall, annually, require of the president, manager, or principal of every seminary, academy, and private school, a report of such facts, arranged in such form as he prescribes, and shall furnish blanks for such reports; and it is made the duty of every such president, manager, or principal, to fill up and return such blanks within the time the commissioner directs. (73 v. 225, § 1.)

Sec. 364. [Duties of commissioner on complaint of fraudulent use of money, etc.; appointment of accountant to investigate charges.] When a complaint is made to the state commissioner of common schools, in writing, verified by the affidavits of at least three freeholders and taxpayers, resident of any school district in the state, and bearing the certificate of the auditor or auditors of the respective county, or counties, in which said district is located, that said affiants are freeholders and taxpayers, alleging that they have good reason to and do believe that any portion of the school fund of such district has been expended, or is being expended, contrary to law, or has been fraudulently, un-

lawfully, or corruptly used, or misapplied, by any of the officers of such district, or that there have been fraudulent entries in the books, accounts, vouchers, or settlement sheets thereof, by any such officers, or that any of such officers have not made settlements of their account as required by law, or whenever from information filed in his office, or from other cause, the state commissioner of common schools may deem it necessary for the safety and security of the public funds of any school district, situated in the state of Ohio, he is authorized and required to appoint some trustworthy and competent accountant, for the purpose of investigating such complaint, or allegations, who after being duly commissioned by said state commissioner of common schools and sworn by any person authorized by law to administer oaths, shall forthwith visit such school district and take possession of all the books, papers, vouchers and accounts of such district, and investigate the truth of the allegations of such complaint, and the condition of the school fund of such district; and the several officers of such school district, on the application of such examiner, shall immediately place in his possession all their books, accounts, contracts, vouchers, and other papers having reference to the receipts and disbursements of the school funds; and the county auditor and treasurer shall give such examiner free access to all the records, books, papers, vouchers, and accounts of their respective offices having reference to the object of such investigation, and said examiner is authorized, by and with the written consent of the prosecuting attorney, or the judge of the court of common pleas of the county in which such district is located, to require the assistance of the official stenographer of said county, in making such examination; and said stenographer shall receive only such compensation and in the manner provided in section 478, Revised Statutes, upon the certificate of the prosecuting attorney of said county. (94 v. 312; 72 v. 82, § 1.)

Blanks are not furnished by the state commissioner for the purposes of this section; for forms; see Appendix.

Sec. 365. [Powers and duties of examiner; his compensation; payment thereof.] Such examiner shall have authority to call before him forthwith, upon written notice, and examine witnesses, under oath, to be administered by him; and he shall immediately after completing such investigation, report in writing, in duplicate, setting forth the condition of the books, vouchers, and accounts of such district, the amount of school funds received for any and all purposes, and from whatever source, the amount expended, and for what, and the amount actually in the treasury, one copy of which report he shall file in the office of the clerk of the court of common pleas of the county in which such district is situate, and the other copy he shall transmit to the state commissioner of common schools at Columbus; and the examiner so ap-

pointed and performing the duties herein required, shall receive as compensation a per diem of five dollars for each day necessarily engaged in the performance of his duties, and shall also receive five cents for each mile by him necessarily traveled in that behalf; but no mileage shall be allowed for a greater distance than from Columbus to such district; and such compensation and mileage shall be paid out of the county treasury upon the warrant of the county auditor, and if the investigation establish the truth of any material allegation in such complaint, then such amount so paid shall be assessed by the county auditor upon the taxable property of the district, to be collected as other taxes are for the use of such county treasurer. (94 v. 313; 72 v. 82, § 2.)

Sec. 366. [Adverse report of examiner to be given in charge to the grand jury; duty of prosecuting attorney.] The judge of the court of common pleas of the proper county shall examine the reports so filed in the clerk's office, as provided in section three hundred and sixty-five, and if it appear therefrom that any part of the common school fund has been fraudulently, unlawfully, or corruptly used or misapplied, or that there has been fraud in any of the entries, accounts, vouchers, contracts, or settlements, or that the settlements have not been made as required by law, or that there appears any defalcation or embezzlement on the part of any of the officers of such school district, he shall give the report specially in charge to the grand jury at the term of the court of common pleas next after the filing of the same; and the prosecuting attorney of such county shall forthwith institute and carry forward such proceedings, civil or criminal, or both, against the delinquent officer or officers of such district as is authorized by law. (72 v. 82, § 3.)

PART SECOND—TITLE III.

SCHOOLS.

- Chapter 1. Classification and Change of Districts.
- Chapter 2. City Districts of the First Class.
- Chapter 3. City Districts of the Second Class, and Village Districts.
- Chapter 4. Township and Special Districts.
- Chapter 5. Joint Sub-districts.
- Chapter 6. School Funds.
- Chapter 7. Provisions Applying to the Various Boards.
- Chapter 8. School Houses and Libraries.
- Chapter 9. Schools, and Attendance Enforced.
- Chapter 10. Enumeration, Treasurer, and Clerk.
- Chapter 11. Reports.
- Chapter 12. Boards of Examiners.
- Chapter 13. Teachers' Institutes.
- Chapter 14. Universities.
- Chapter 15. Schools Specially Endowed.

Sec. 6819-1. It shall be unlawful for any person or persons to engage in or aid or abet what is commonly called hazing in or while attending any of the colleges, public schools or other institutions of learning in this state, and whoever participates in the same shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than one hundred dollars, or imprisoned not less than thirty days nor more than one year or both, at the discretion of the court.

CHAPTER I.

CLASSIFICATION AND CHANGE OF DISTRICTS.

SECTION.

- 3885. Classification of.
- 3886. City school districts of the first class;
city districts of the first, second, and
third grades of first class.
- 3887. City districts of second class.
- 3888. Village districts.
- 3889. Change of classification in certain cases.
- 3890. Township districts.

SECTION.

- 3891. Special districts.
- 3892. Boundaries of sub-districts not changed.
- 3893. Transfer of territory from one district
to another.
- 3894. Township districts may become village
districts.
- 3895. How vote shall be taken.
- 3896. How board organized.

Classification of cities; see Secs. 1547, 1548 R. S.

Sec. 3885. [Classification of.] The state is hereby divided into school districts to be styled respectively, city districts of the first grade of the first class; city districts of the second grade of the first class; city districts of the third grade of the first class; city districts of the first class; city districts of the second class; village districts; special dis-

Classification and Change of Districts.

Ch. I.

tricts and township districts. (93 v. 165; 84 v. 184; Rev. Stat. 1880; 70 v. 195, § 1.)

Common school districts and boards of education are not corporations within the meaning of § 1, Art. XIII, of the Constitution. 38 O. S., 54.

This classification is not unconstitutional. 39 O. S., 635.

Whether sections 3885-3888 are to be treated prospectively. 10 C. C., 480-488.

Special districts; see 40 O. S., 275, under Sec. 3891.

Sec. 3886. [City districts of the first class.] Each city having a population of ten thousand or more, together with the territory attached to it for school purposes, if any, and excluding the territory within its corporate limits detached for school purposes, if any, shall constitute a school district to be styled a city district of the first class;

[City districts of the first, second and third grades of the first class.] Cities of the first, second and third grades of the first class, together with the territory outside of their respective limits, if any, attached to them for school purposes, and excluding the territory within their corporate limits, detached for school purposes, if any, shall constitute respectively school districts to be styled city districts of the first, second and third grades of the first class; and each district that has heretofore been constituted a city district of the first class, shall remain such, except as herein otherwise provided. (94 v. 125; 93 v. 165, 39; 85 v. 91; 84 v. 184; 81 v. 71; Rev. Stat. 1880; 70 v. 195, § 2.)

Sec. 3887. [City districts of the second class.] Each city of the second class, having a population of less than ten thousand by the last preceding census, including the territory attached to it for school purposes, and excluding the territory within its corporate limits detached for school purposes, shall constitute a school district, to be styled a city districts of the second class. (88 v. 430; 70 v. 195, § 3.)

Reduction of a city of the second class to a village does not affect the organization or operation of the school district in such corporation; see Sec. 1040 R. S.

Sec. 3888. [Village districts.] Each village, including the territory attached to it for school purposes, and excluding the territory within its corporate limits detached for school purposes, shall constitute a school district, to be styled a village district. (74 v. 140, § 4.)

Division of township school funds when village districts are created; see Sec. 3946a.

The board of education of a township established a central or high school and located it in a sub-district. The territory comprised in the sub-district after the establishment of the central high school, and before the act of May 1, 1873, was formed into an incorporated village; Held, that the property of the central or high school and the management of the school did not, by virtue of said last mentioned act, pass to the board of education of the village. 41 O. S., 680.

Sections 3888-3891 cited: 7 C. C., 1, 3; 4 C. C., 72, 74.

Sec. 3889. [Change of classification of, in certain cases.] Municipal corporations hereafter created, or advanced to higher grade, except villages created by advancement or otherwise, shall, from and

Ch. 1.

Classification and Change of Districts.

after their creation or advancement, be school districts corresponding to their grade as herein provided. (70 v. 195, § 5.)

In regard to establishing village districts, see Sec. 3912.

Sec. 3890. [Township districts.] Each organized township, exclusive of any of its territory included in a city, village, or special district, shall constitute a school district, to be styled a township district. (70 v. 195, § 7; S. & C. 1346.)

A change of township boundaries accordingly works a change in the township district boundaries. Com.

Sec. 3891. [Special districts.] Any school district now existing, other than those mentioned in sections *thirty-eight hundred and eighty-six, thirty-eight hundred and eighty-seven, thirty-eight hundred and eighty-eight, and thirty-eight hundred and ninety*, which has been established by a vote of the people in accordance with any act of the general assembly, or which has been established by a general or local act of the general assembly, shall constitute a school district, to be styled a special district; and such districts may be established as provided in chapter five of this title. (70 v. 195, § 6.)

Division of township school funds when special districts are created; see Sec. 3946a.

The formation of a special district from territory within the limits of a township, by special act, is not in conflict with Sec. 26, Art. II, of the Constitution. 38 O. S., 54, overruled by 46 O. S., 275.

Sec. 3892. [Boundaries of subdistricts not changed.] The several subdistricts and joint subdistricts now existing within any township district shall continue, according to their respective boundaries, to be subdistricts or joint subdistricts thereof, subject to the provisions of this title. (70 v. 195, § 8.)

In regard to change in sub-districts; see Secs. 3921, 3946.

Provision for the establishment of joint sub-districts; see Secs. 3923, 3930.

Dissolution or alteration of joint sub-districts; see Sec. 3950.

A sub-district or joint sub-district is not a school district within the meaning of the law. Com.

CHANGE OF DISTRICTS.

Election of sub-districts consolidated and new sub-district formed; Sec. 3922.

Abandonment of special or village district; Sec. 3926, et seq.

Altering joint sub-districts; Secs. 3941, 3950.

Sec. 3893. [Transfer of territory from one district to another.] A part or the whole of any district may be transferred to an adjoining district, by the mutual consent of the boards of education having control of such districts; but no transfer shall take effect until a statement, or map, showing the boundaries of the territory transferred, is upon the records of such boards; nor, except when the transfer is for the purpose of forming a joint subdistrict, until a copy of such statement or map, certified by the clerks of the boards making the transfer, is filed with auditor of the county in which the territory so transferred is situated;

and any person living in the territory so transferred may appeal to the county commissioners, as provided in section thirty-nine hundred and sixty-seven, and the commissioners, at their first regular meeting thereafter, shall approve or vacate such transfer; provided, however, that when a village or a portion of a village, township, or special school district has been attached to and become a part of an adjoining city or village by annexation, the portion of such village, township, or special school district thus annexed to such city or village shall be deemed to be thereby transferred from such village school district, township, or special school district into such city or village school district, and the amount of the existing school indebtedness of such village school district, township school district, or special school district, shall be ascertained and apportioned by the county commissioners in the same manner as provided in section sixteen hundred and fifteen; and the county auditor, in the proper apportionment of the school tax for the respective school districts, shall be governed by an accurate map of the territory so annexed as aforesaid; and the boards of education of the respective school districts shall immediately after the passage of this act, cause to be entered upon the records of their respective boards a complete and correct description of the territory so annexed. (91 v. 307; 90 v. 126; 89 v. 68; 70 v. 195, § 40.)

See decision in 46 O. S., 275, under Sec. 3891.

When territory which is a part of a special school district is annexed to a village which constituted another school district, such territory did not thereby become a part of the village school district—the directors of the special school district not having consented to such transfer under section 3893, or otherwise. 4 C. C., 72.

Section 3893 cited in 10 C. C., 480.

When territory is transferred from one district to another, the district to which the territory is attached is not entitled to a proportionate share of the school funds in the hands of the board of education or the county treasurer for the district from which it was detached, but is entitled to a share of the taxes levied but not collected. Attorney General.

The territory included within a school district must be contiguous. Com.

Sec. 3894. [Township districts may become village districts.] The board of education of any township district may decide to submit, and, on petition of one-third of the electors of the district, shall submit, at the first regular election for township officers after such decision is made or petition received, the question whether such township district shall be governed by the provisions of this title relating to village districts; and the board shall give notice of the vote to be taken, by posting up written or printed notices, in ten or more public places in the township, at least twenty days prior to such election. (70 v. 195, § 155.)

Sec. 3895. [How a vote shall be taken.] The election shall be conducted by the township trustees, who shall provide a separate ballot-box and separate poll-books, and make a return of the vote to the township clerk, and also to the commissioner of common schools,

within five days after the election; and the persons voting at such elections in favor of such change shall have written or printed on their ballots — "School District," and those opposed to such change — "No School District." (70 v. 195, § 156.)

Sec. 3896. [How board organized.] At the annual organization of the township board after such election, if it be found that a majority of the votes cast were in favor of the change, the board shall select, by vote or lot, six persons to serve as a township board of education, two of whom shall serve for three years, two for two years, and two for one year; and such board shall thereafter be governed by the provisions of this title relating to boards of village districts. (70 v. 195, § 157.)

CHAPTER 2.

CITY DISTRICTS OF THE FIRST CLASS.

SECTION.

3897. Board of education in Cincinnati; how constituted; qualification, etc.
- 3897a. Appointment and removal of teachers in Cincinnati.
- 3897b. Pension fund.
- 3897c. Trustees of pension fund; constitution, etc.
- 3897d. Retirement and pension of teachers; "teacher" defined; amount of pension.
- 3897e. Use of principal and income.
- 3897f. Monthly certificates of deduction from salaries; creation and disbursement of special fund.
- 3897g. Duties, etc., of custodian of fund.
- 3897h. Rebate in case of resignation, removal or death.
- 3897i. Rules and regulation.
3898. Board of education in city districts, first class; election and term of members; exceptions; redistricting.
- 3898a. School board in East Liverpool; number; terms.
- 3898a.(2). Board of education of Portsmouth; number; election; terms; superintendent; teachers.
3899. Repealed.
- 3899-1. Cleveland board of education.
- 3899-2. Election; meeting; levying tax.
- 3899-3. Election; meeting; organization.
- 3899-4. Resolutions.
- 3899-5. Appointment of teachers and employes; powers over libraries; manual and domestic training schools.
- 3899-6. School director; election and powers.
- 3899-7. First and subsequent election; term.
- 3899-8. Duties, etc.
- 3899-9. Vacancies.
- 3899-10. Superintendent of instruction; term, etc.
- 3899-11. Accounts; director of accounts.
- 3899-12. Warrants for money; approval of claims.
- 3899-13. Evidence of accuracy and legality of same.
- 3899-14. Appropriations.
- 3899-15. Individual liability of auditor and sureties.
- 3899-16. Auditors' reports; examination; bond, etc.
- 3899-17. Moneys due to board.
- 3899-18. Office of certain auditor abolished.
- 3899-19. When contract binding.
- 3899-20. When to be in writing, etc.; limitation.
- 3899-21. Proceedings when cost of proposed improvement exceeds \$1,500; exceptions.

SECTION.

- 3899-22. Impeachment of director or member of council; costs.
- 3899-23. Officers of certain members of board abolished.
- 3899-24. Repeals.
- 3899a. Cleveland pension fund.
- 3899b. How created.
- 3899c. Teachers retired within twenty-five years; deduct part of pension.
- 3899d. Examination fees of teachers to be paid into fund.
- 3899e. Legacies, bequests and donations.
- 3899f. Membership of retiring board.
- 3899g. Affairs of board; compensation.
- 3899h. Trustees of fund; bond.
- 3899i. Power of retiring board.
- 3899k. Pension shall not be paid for five years.
- 3899l. Retirement of teachers; amount of pension.
- 3899m. Amount of pension in case of disability.
- 3899n. Rebate to teacher on removal or non-appointment.
- 3899o. When teacher must be retired; amount of pension; one per cent. deduction; pension to cease upon re-employment.
- 3899p. Pension to cease upon death or resignation.
- 3899-25. Board of education in Toledo; number; election; meetings.
- 3899-26. Election of members.
- 3899-27. Number of members; terms.
- 3899-28. Powers of board.
- 3899-29. Organization; president; committee; superintendent of instruction; clerk of board.
- 3899-30. Powers of superintendent; report; attending meetings.
- 3899-31. Business manager; duties; powers; ex-officio member of board; report to board; bond.
- 3899-32. Report by business manager; duties.
- 3899-33. Suspending or removing superintendent, business manager or clerk.
- 3899-34. City treasurer ex-officio treasurer of board; bond; compensation.
- 3899-35. Payments of money due board; who may collect or receive moneys.
- 3899-36. How money to be drawn from treasury.
- 3899-37. How contracts involving more than \$250.00 to be made.
- 3899-38. Contracts for building, enlarging, etc., school house, or making improvements, the cost of which exceeds \$1,500.00; exceptions.

Ch. 2.

City Districts of the First Class.

SECTION.

3899-39. Saving clause.

3899-40. Toledo teachers' pension fund created.

3899-41. Membership of board of trustees; investment of fund; rules and regulations.

3899-42. Retirement of teacher; "teacher" defined; amount of pension.

3899-43. Power of board over fund.

3899-44. Clerk of board of education to report amounts paid into fund.

3899-45. City treasurer made treasurer of fund; bond; compensation.

SECTION.

3899-46. Death, resignation, or removal for cause terminates interest in fund; relief may be afforded in case of accident or sickness.

3900. Where certain electors to vote; plats of attached territory.

3901. Conduct of elections.

3902. How electors on attached territory to cast ballots.

3903. Time of regular meetings of boards of education; special meetings, etc.

3903-1. Columbus; power of school board to donate certain land for park purposes.

Sinking fund for school bonds of district, first class; see Sec. 3970-6.

Physical culture to be taught in certain schools; Sec. 4020-17.

Public day schools for deaf children in city districts of the first and second grade of the first class; Sec. 4009-3.

Sec. 3897. [Board of education in Cincinnati; how constituted; qualification, etc.] In city districts of the first grade of the first class the board of education shall consist of one member from each ward, and each member of the board shall be an elector of the ward, or of the township, or part of the township, which for school purposes has been or may be attached to such ward for which he is elected or appointed; provided, that in city districts of the first grade of the first class, beginning with the election of city officers to be held in April, 1897, one member shall be elected from each ward, or from territory attached to each ward for school purposes, who shall serve for the term of three (3) years; and provided further, that all members, clerks and assistant clerks of such boards heretofore elected, shall continue to be members, clerks and assistant clerks thereof until their successors are elected and qualified as herein provided; and thereafter as the term of members elected by said ward, or ward with territory attached for school purposes, as above provided, shall expire, successors shall be elected for the term of three years; and provided further, that the clerks and assistant clerks of any such boards shall be elected for the term of three (3) years. If any person elected a member of said board shall, during his term as said member, move out of the ward for which he was elected, then his term shall cease and determine, and said board shall elect a person to fill the vacancy; the members elected under this act shall hold office until their successors are elected and qualified; provided, that the board of education established by this act shall be in all respects the successors of the respective board whose place they take; but the members of such board of education shall not, as individuals or as local committees, exercise supervisory authority over the schools in the several wards or districts or have the selection or nomination of teachers; and provided further, that when a new or additional ward shall be created in such city district, the board of education shall proceed to elect a

person who is an elector of such additional ward, or of territory thereto attached for school purposes, as a member of the board from such ward, to serve until the next election for members of the board of education, at which election the qualified electors of such new wards, and the territory annexed for school purposes, shall elect one judicious and competent person, having the qualifications of an elector of such ward or territory thereto attached for school purposes, to serve as a member of the board of education. (92 v. 149; 91 v. 289; 84 v. 184; 82 v. 7; 77 v. 80; Rev. Stat. 1880; 70 v. 195, §§ 9, 10.)

Sec. 3897a. [Appointment and removal of teachers in Cincinnati.]

The superintendent of the public schools of said city district of the first grade of the first class shall appoint all the teachers of said school by and with the consent of the board of education, which appointments shall be for a period of one year, when made the second time shall be for a period of two years, and when made the third time shall be for a period of four years; all teachers who shall have served seven successive years in the public schools of said city district, whether before or after, or partly before or after the passage of this act, shall when appointed by the said superintendent, and confirmed by said board, hold their positions until removed by death, resignation or for cause, subject, however, to the provisions and requirements of sections 4074 and 4081 of the Revised Statutes and all other sections and provisions of the Revised Statutes relating to boards of examiners and their powers and duties; provided, however, that any teacher of said schools may at any time be removed by said superintendent, subject to the approval of a majority of said board of education, for cause, upon written charges, which charges, when filed, shall be investigated by said board of education, or by a committee of said board appointed for such purpose, and the decision of said board of education shall be final. Whenever in said city districts of the first grade of the first class the high schools of said city district shall or at any time hereafter may be, under the control or management of a union board of high schools, or of any other separate board, the superintendent of public schools of said city district shall appoint all the teachers of said high schools, by and with the consent of the majority of the members of said union board of high schools, or any other separate board of said district, which appointments shall be for a period not exceeding one year; provided, however, that all teachers of said high schools who shall have served five successive years in the public schools of said city district or in the high schools of said city district, whether before or after, or partly before or after the passage of this act, or both, when appointed by said superintendent and confirmed by said union board or other separate board having the control of said high schools, shall hold their positions until removed by death, resignation

or for cause, subject, however, to the provisions and requirements of sections 4074 and 4081 of the Revised Statutes and all other sections and provisions of the Revised Statutes relating to boards of examiners and their powers and duties; provided, however, that any teacher of said high schools may at any time be removed by said superintendent, subject to the approval of the majority of said union board of high schools, or other separate board, or by said union board or other separate board, for cause upon written charges, which charges, when filed, shall be investigated by said union board of high schools, or other separate board of said city district, or by a committee of said board appointed for such purpose, and a decision of such union board, or other separate board having control of said high schools, shall be final; provided, further, that whenever the power to appoint teachers in the public schools of such city district of the first grade of the first class is not given by the law of the state to the superintendent of the public schools or not given to him by the board of education of such city district in pursuance of the law, then said union board of high schools, or other separate board, shall appoint such teachers in the high schools to serve as above provided, with power of removal as above provided, with power of removal as above provided. The provisions of this vided. The provisions of this section relating to the appointment and terms of teachers shall not apply to the appointment or term of any superintendent or superintendents of schools of such city districts. (94 v. 305; 92 v. 149.)

Sec. 3897b. [Pension fund.] In order to create a fund to be known as the "school teachers' pension fund," two dollars a month for each and every school month shall be deducted by the proper officers from the salaries paid to all teachers of said city district of the first grade of the first class, including the teachers of the high schools of said city district, and paid into the city treasury to the credit of said fund, to be used exclusively for pensions for teachers as hereinafter provided. All moneys received from donations, legacies, gifts, bequests or from any other source shall also be paid into said fund or into a permanent fund, only the interest of which may be applied to the payment of pensions, but no taxes shall be levied or any other public moneys be appropriated for said fund, except as herein provided. (94 v. 305; 92 v. 152.)

Sec. 3897c. [Trustees of pension fund; constitution, etc.] Said school teachers' pension fund shall be under the charge, management and control of a board to be known as the board of trustees of the school teachers' pension fund, composed of seven members, two to be elected by the board of education of said city district, one to be elected by the union board of high schools, or other separate board having charge of the high schools in said city district, three to be elected by the teachers

of the public schools, including the teachers of the high schools of said city district, and the superintendent of schools of said city district, who *ex officio* shall be a member of said board. The board of education of said city district shall, at its first regular meeting after this act goes into effect, elect two of its members, one for one year, and one for two years and thereafter annually elect one of its members for two years, who shall serve as members of said board; the union board of high schools, or other separate board having charge of the high schools in said city district, shall, at its first regular meeting after this act goes into effect, and thereafter annually elect one of its members, who shall serve as a member of said board; the teachers of the public schools, including the teachers of the high schools, of said city district, shall within thirty days after this act goes into effect, at a meeting to be called by the superintendent of schools of said city district, elect three of their number, one for one year, one for two years, and one for three years, and thereafter annually at a meeting to be called in the same manner, elect one of their number for three years, who shall serve as members of said board. The members of said board shall serve as such without compensation and shall serve until their successors are elected and qualified. Said board of trustees shall have power to invest said pension fund in the name of said board in bonds of the United States, or of the state of Ohio, or of any county in this state or of any municipal corporation in this state, or of any school district of this state, and said board shall have power to make payment from said pension fund of pensions granted in pursuance of this act. Said board of trustees shall also have power from time to time to make and establish such rules and regulations for the administration of said pension fund as they shall deem best. (92 v. 152.)

Sec. 3897d. [Retirement and pension of teachers; "teacher" defined; amount of pension.] Said board of education of said city district and said union board or other separate board having the control and management of the high schools of said city district shall each of them have power by a majority vote of all the members composing said board to retire on account of physical or mental disability any male or female teacher under such board who shall have taught for a period aggregating twenty (20) years, whether before or after, or partly before or after the passage of this act; provided, however, that three-fifths of said period of service shall have been rendered by said beneficiary in the public schools or the high schools of said city district or in the public schools or high schools of the county in which said city district is located. The term "teacher" under this act shall include the superintendent of schools, all superintendents of instruction, principals, special teachers, and teachers employed by either of said boards. Any teacher shall have

Ch. 2. City Districts of the First Class.

the right to retire and become a beneficiary under this act who shall have taught for a period aggregating thirty (30) years, whether before or after, or partly before or after the passage of this act; provided that three-fifths of said term of service shall have been rendered in the public schools or the high schools of said city district, or in the public schools or high schools of the county in which said city district is located. Each teacher so retired or retiring shall be entitled during the remainder of his or her natural life to receive as pension, annually, the sum of ten (\$10) dollars, for each and every year of service rendered as teacher, but in no event shall such pension paid to any teacher exceed the sum of five hundred (\$500) dollars in any one year, and said pension shall be paid monthly during the school year; but in no event shall such pension be paid to any teacher until such teacher shall contribute or shall have contributed to said fund a sum equal to twenty (\$20) dollars a year for each and every year of service rendered as teacher, but in no event shall this sum exceed six hundred (\$600) dollars; but should any teacher retiring be unable to pay the full amount of this sum before receiving a pension, the board of trustees shall, in paying the annual pension to such retiring teacher, withhold on each month's payment twenty per cent. thereof, until the full amount as above provided shall have been thus contributed to the fund; provided, further, that if said pension fund shall at any time be insufficient to meet the pensions so provided for that during the period that such fund is insufficient to make such payments, the amount in said fund during said period shall be pro-rated between the parties entitled thereto. No payments shall be made to any beneficiary, nor shall any teacher retired or retiring be entitled to any payment under the provisions of this act prior to July 1st, 1899. (94 v. 305; 92 v. 153.)

Sec. 3897e. [Use of principal and income.] Said board of trustees shall have the power to use both the principal and income of said fund for the payment of the pensions herein provided for. (92 v. 154.)

Sec. 3897f. [Monthly certifications of deductions from salaries; creation and disbursement of special fund.] The clerk of the board of education of said city district and the clerk of the union board of high schools or other separate board having the control and management of the high schools of said city district, shall each of them certify monthly to said board of trustees all amounts deducted from the salaries of the teachers as aforesaid, which amounts as well as all other money contributed to said fund shall be set apart as a special fund for the purposes herein specified, subject to the order of said board of trustees. All moneys belonging to said fund shall be paid only on the order of the said board of trustees entered upon its minutes on warrants signed by the president and secretary of said board. (92 v. 154.)

Sec. 3897g. [Duties, etc., of custodian of fund.] The city treasurer of said city of the first grade of the first class located wholly or partly in said city district shall be the custodian of said pension fund and shall keep the same subject to the order, control and direction of said board of trustees. He shall keep books of accounts concerning said fund in such manner as may be prescribed by said board, which books of accounts shall always be subject to the inspection of said board of trustees or of any member thereof. Said treasurer shall execute a bond to said board of trustees with good and sufficient sureties in such sum as said board of trustees shall require, which bond shall be subject to the approval of said board and be conditioned for the faithful performance of his duties as custodian of said board and treasurer of said board. He shall always keep and truly account for all moneys and profits coming into his hands as such treasurer belonging to such fund, and at the expiration of his term of office, shall pay over, surrender and deliver to his successor all securities, moneys and other property of whatsoever kind, nature and description which may be in his hands or under his control as treasurer aforesaid. Said treasurer shall be paid for his services under this act a compensation not to exceed one per cent annually of the amount paid into said fund during the year. (92 v. 154.)

Sec. 3897h. [Rebate in case of resignation, removal or death.] Any teacher who shall resign or be removed for cause as aforesaid, shall upon application within three (3) months after date of such resignation or removal be entitled to receive one-half of the total amount paid by such teacher into such fund. In case of the death of any teacher, the heirs, legatees or assigns of the deceased teacher shall be entitled to receive one-half of the total amount paid by such teacher into such fund, upon application therefor with proof of claim to the satisfaction of the board of trustees. (94 v. 305; 92 v. 154.)

Sec. 3897i. [Rules and regulations.] The board of trustees shall make such rules and regulations as it may deem expedient or necessary for its government. (94 v. 305.)

Sec. 3898. [Board of education in city districts, first class; election and term of members; exceptions; redistricting; Massillon.] In each city district of the first class, and not of the first or second grade, the board of education shall consist of two members from each ward, except in city districts organized under a law providing for one member only for each ward, in which districts the board may, at any time, by a vote of the majority of all its members, provide that thereafter each ward shall be represented by two members, and thereupon proceed to choose one additional member for each ward, to serve until the next annual election for city officers, and until the election and qualification

Ch. 2.

City Districts of the First Class.

of his successor; and each member of the board shall be an elector of the ward for which he is elected or appointed; and at every annual election for city officers in a city which constitutes districts of the first class, wherein the board consists of two members for each ward, there shall be elected in each ward, by the qualified electors thereof, one judicious and competent person to serve as a member of the board of education of the district for two years, from the third Monday of April succeeding his election, and until the election and qualification of his successor; provided, that at the annual election for city officers, held after a city has been constituted a city district of the first class, with a board to consist of two members from each ward, there shall be elected in each ward of such city, by the qualified electors of such ward and of said district entitled to vote in such ward, two persons of the required qualifications to serve as members of the board of education of such districts, one for one year and the other for two years from the third Monday of April succeeding their election and until the election and qualification of their successors; and provided, that any elector residing in such district, but not in any ward of such city, shall, if the territory containing his residence has not been attached to any ward for school purposes as provided in section thirty-nine hundred, be entitled to vote for member of the school board in the ward nearest his residence; and in such case a separate ballot-box and poll-book shall be provided and used, as required in section thirty-nine hundred and two, in each ward where any such elector may be entitled to vote when the board of education in such city district of the first class consists of as many members as there are wards, there shall be elected at the annual election for city officers in the year eighteen hundred and eighty, and every two years thereafter, in each ward designated by an even number, and in the year eighteen hundred and eighty-one, and every two years thereafter in each ward designated by an odd number by the qualified electors thereof, one member of the board, who shall hold his office for two years, and until the election and qualification of his successor. Provided, that in any such city which has been, or may be re-districted for election purposes, by whomsoever or howsoever such re-districting may be made, such re-districting shall not affect the term of the members of the board of education then in office, but each of said members shall serve the full term for which he was elected, and shall be the member, in said board, for the remainder of the term for which he was elected, of the ward in which he resides, after such re-districting is made, if such ward shall be a part or the whole of the ward in which he was elected; at the annual election for city officers occurring next after such re-districting has been, or may be, had, a member shall be elected for each ward created by such re-districting in which a member

does not hold over as above provided. The members chosen at such election from wards entitled to elect members for a term of two years shall serve for such period and until their successors, who shall also be elected for a similar term, are elected and qualified. The members chosen at such election from wards not entitled at such election to choose members for a term of two years, shall serve for one year, at the expiration of which term a successor shall be elected for each of said members to serve for a period of two years, and until his successor, who shall be elected for a term of two years, is elected and qualified. Any ward which, but for the holding over of a member, as above provided, would elect a member at the annual election for city officers occurring next after the redistricting of any such city, for a term of two years, shall, at the expiration of the term of such holding over member, elect a member for the term of one year, but the successor of any member so elected for one year, shall each be chosen for a term of two years and until his successor is elected and qualified. In city districts of the first class and not of the first or second grade, the boundaries of which are not identical or coterminous with the boundaries of the city, the population of which at the federal census of 1890 did not exceed 10,100, the board of education shall consist of six members elected at large by the qualified electors of the district. Provided, that at the next annual election, succeeding the passage of this act, two members shall be elected to serve two years and until the election and qualification of their successors, and at the second annual election succeeding the passage of this act two members shall be elected to serve two years and two members to serve three years and until the election and qualification of their successors. At all subsequent annual elections two members shall be elected to serve three years and until the election and qualification of their successors. (92 v. 424; 91 v. 69; 84 v. 184, 185; 81 v. 71, 72; Rev. Stat. 1880; 70 v. 195, § 11.)

For "an act to provide for the election of two members of the board of education from each ward in Ironton." 85 v. 103.

Sec. 3898a. [Board of education in East Liverpool; number; terms.] In the East Liverpool city school district in Columbiana county, Ohio, the board of education shall consist of seven members elected at large by the qualified electors of the district. That at the next annual election, succeeding the passage of this act, four members shall be elected to serve two years and until the election and qualification of their successors, and three members to serve one year and until the election and qualification of their successors, at the second annual election, after the passage of this act. Three members shall be elected to serve two years and at the next, four members shall be elected to serve two years and until the election and qualification

Ch. 2.

City Districts of the First Class.

of their successors. Thus the number to be elected annually thereafter shall alternate three and four as the annual elections recur. (93 v. 506.)

Sec. 3898a. (2). [Board of education for Portsmouth; number; election; terms; superintendent; teachers.] In city school districts of the first class in cities of the second class, third grade c, the board of education shall consist of three members from the city at large, and one member from each of the wards in such city. The members at large shall be elected for terms of three years each by the qualified electors of such city; and the members from the wards shall be elected for terms of two years each by the qualified electors therein, at the annual municipal election; provided, however, that, at the first election held under the provisions of this act, the three members at large shall be elected for terms of one, two and three years, respectively, and thereafter at the expiration of such terms all such elections of a member at large shall be for a period of three years; and the members of said board representing the even numbered wards of such city shall be elected each for a term of two years, and those representing the odd numbered wards thereof shall be elected each for a term of one year, and thereafter, at the expiration of said terms, all such elections of ward members shall be for the period of two years; and upon the election and qualification of the board of education in such districts as herein provided, the board of education existing therein shall be, and the same is hereby abolished. It shall be the duty of the members at large to elect and employ a superintendent of instruction, and such superintendent shall, by and with the consent of the members at large of such board, appoint all the teachers in the public schools of such city, and no person shall be appointed as a teacher in such schools, who is a relative of any of the three members at large. (93 v. 622.)

Part of new charter for Portsmouth to be submitted to electors.

CLEVELAND.

Sec. 3899. [Cleveland board of education; city divided into districts; election and term of members.] Repealed 89 v. 79.

(3899-1) Sec. 1. [Cleveland board of education.] Boards of education in city districts of the second grade of the first class shall consist of a school council and a school director. (89 v. 74.)

LEGISLATIVE.

(3899-2) Sec. 2. [Election; meetings; levying tax.] The legislative power and authority shall be vested in the school council, which shall consist of seven members, each of whom shall receive an annual salary of two hundred and sixty (\$260) dollars, payable

monthly out of the contingent school funds of the district, to be elected by the qualified electors residing in such district, and which shall meet on each and every Monday night during the school year and on every first and third Monday of the month during vacation. No resolution levying a tax shall be adopted unless the resolution, together with the estimates on which the same is based, has been submitted to and approved by the board of tax commissioners in the city located in full or in part in such districts, (91 v. 839; 89 v. 74.)

(3899-3) **Sec. 3. [Election; meetings; organization.]** The first election for such council shall be held on the first Monday of April, 1892, at which election three members of the council shall be elected for a term of two years, and their successors shall be elected at the annual municipal election for 1894, and biennially thereafter, and four members of the council shall at such election in 1892 be elected for a term of three years and their successors shall be elected at the annual municipal election of 1895, for a term of two years and biennially thereafter, and all members of the council shall serve until their successors are elected and qualified. The council shall organize annually on the third Monday in April, by choosing one of their members president. On the third Monday in April, 1896, and biennially thereafter, the school council shall elect a clerk who shall not be a member of said council, and who shall be clerk of the board of education. He shall receive a salary to be fixed by the council, which shall not exceed two thousand dollars per year. (92 v. 490; 89 v. 74.)

(3899-4) **Sec. 4. [Resolutions.]** Every legislative act of the council shall be by resolution. Every resolution involving an expenditure of money or the approval of a contract for the payment of money, or for the purchase, sale, lease or transfer of property, or levying any tax, or for the change or adoption of any text book, shall, before it takes effect, be presented, duly certified by the clerk, to the school director for approval. The director, if he approves such resolution, shall sign it; but if he does not approve it he shall return the same to the council at its next meeting, with his objections, which objections the council shall cause to be entered upon its journal, and if he does not return the same within the time above limited, it shall take effect in the same manner as if he had signed it; provided, that the director may approve or disapprove the whole, or any item or part of any resolution appropriating money; and further provided, that any item disapproved shall have no bearing or connection with any other part of such resolution. When the director refuses to sign any such resolution or part thereof, and returns it to the council with his objections, the council shall forthwith proceed to reconsider it; and, if the same is approved by a vote of two thirds of all the members elected to the council, it shall then take effect as if it had received the signature of the director; and in

Ch. 2.

City Districts of the First Class.

all such cases the votes shall be taken by yeas and nays and entered on the records of the council. (89 v. 249, 75.)

(3899-5) **Sec. 5.** [Appointment of teachers and employes; powers over libraries; manual and domestic training schools.] The council shall have power to provide for the appointment of all necessary teachers and employes and prescribe their duties and fix their compensation. It shall also have the same powers and perform the same duties in relation to the library board and manual and domestic training schools as are now vested in and exercised by the boards of education of city districts of the second grade of the first class. (89 v. 75.)

EXECUTIVE.

(3899-6) **Sec. 6.** [School director; election and powers.] The school director shall be elected by the qualified electors of the district, and, except as otherwise provided in this act, all the powers heretofore vested in and performed by the board of education in such districts, shall be vested in and performed by him. (89 v. 75.)

(3899-7) **Sec. 7.** [First and subsequent elections; term.] The first election for such director shall be held on the first Monday of April, 1892, and the director so elected shall serve until his successor is elected and qualified; and such successor shall be elected at the time of the annual municipal election for 1894, and biennially thereafter. (89 v. 75.)

(3899-8) **Sec. 8.** [Duties, etc.] The director shall devote his entire time to the duties of his office, and shall receive an annual salary of five thousand (\$5,000) dollars, payable monthly out of the school funds of the district; and before entering upon the discharge of the duties of his office shall give bond for the faithful performance thereof in the sum of twenty-five thousand (\$25,000) dollars, with not less than two sureties to be approved by the board, which bond shall be deposited with the clerk within ten days from date of election, and preserved by him. (89 v. 76.)

(3899-9) **Sec. 9.** [Vacancies.] In case of any vacancy in the office of school director or member of the council, the council may, by the vote of the majority of all the members elected, fill such vacancy until the next annual municipal election occurring more than thirty days after such vacancy occurs, when the same shall be filled by election for unexpired term. (89 v. 76.)

(3899-10) **Sec. 10.** [Superintendent of instruction; term, etc.] The school director shall, subject to the approval of and confirmation by the council, appoint a superintendent of instruction, who shall remain in office during good behavior, and the school director may at any time, for sufficient cause, remove him; but the order for such removal shall

be in writing, specifying the cause therefor, and shall be entered upon the records of his office; and he shall forthwith report the same to the council, together with the reasons therefor. The superintendent of instruction shall have the sole power to appoint and discharge all assistants and teachers authorized by the council to be employed, and shall report to the school director in writing annually, and oftener if required, as to all matters under his supervision, and may be required by the council to attend any or all of its meetings; and except as otherwise provided in this act, all employees of the board of education shall be appointed or employed by the school director. He shall report to the council annually, or oftener if required, as to all matters under his supervision. He shall attend all meetings of the council and may take part in its deliberations, subject to its rules, but shall not have the right to vote. (89 v. 76.)

ACCOUNTS.

(3899-11) **Sec. 11. [Director of accounts.]** The city auditor of the city located in whole or in part in such district, shall be the auditor of the board of education of such district. He shall keep an accurate account of all taxes levied for school purposes, and of all moneys due to, received and disbursed by the board; also of all assets and liabilities of, and all appropriations made by the school council, and shall receive and preserve all vouchers for payments and disbursements made to or by the board. (89 v. 76.)

(3899-12) **Sec. 12. [Warrants for money; approval of claims.]** He shall issue all warrants for the payment of money from the school funds, but no warrant shall be issued for the payment of any claim until such claim is approved by the school director, except the payroll for assistants in school work and teachers, which shall be approved by the president and clerk and the superintendent of instruction. (87 v. 76.)

(3899-13) **Sec. 13. [Evidence of accuracy and legality of same.]** Whenever a claim shall be presented to the auditor, he shall have power to require evidence that the amount claimed is justly due and is in conformity to the law, and for that purpose he may summon before him any officer, agent or employee of the board, or any other person, and examine him on oath or affirmation relative thereto, which oath or affirmation he may administer. (89 v. 77.)

(3899-14) **Sec. 14. [Appropriations.]** No money shall be drawn from the treasury except in pursuance of appropriations made by the school council, and whenever an appropriation is made by the council the clerk shall forthwith give notice thereof to the auditor and treasurer. No appropriations shall be made for a longer period than for the end of the current year, and at the end of each year, all the un-

expended balances of appropriations shall revert to the school fund. (89 v. 77.)

(3899-15) Sec. 15. [Individual liability of auditor and sureties.]

If the auditor shall draw a warrant for any claim contrary to law, he and his sureties shall be individually liable for the amount of the same. (89 v. 77.)

(3899-16) Sec. 16. [Auditors' reports; examination of same; bond, etc.] The auditor shall submit to the school council on the second Monday in September in each year, and oftener if required by it, a report of the accounts of the board, verified by his oath, exhibiting the revenues, receipts, disbursements, assets and liabilities of the board, the sources from which the revenues and funds are derived and in what manner the same have been disbursed. Said report, filed on the second Monday in September, shall cover the period of one year ending with the thirty-first day of August next preceding the time of making such report. Said report shall be examined by the corporation counsel together with two suitable persons to be appointed by the court of common pleas on the second Tuesday in September of each year, and the two persons so appointed shall each be allowed and paid out of the contingent fund of the board of education the sum of five dollars per day for the time they are necessarily employed in making said investigation, but said per diem compensation shall not be allowed to either of said persons for more than thirty days. To aid in their investigation, the persons so appointed with the corporation counsel to examine said report, shall have power, when in their opinion it is necessary, to subpoena witnesses to appear before them at such time and place as is designated. Upon the filing of a precept with the clerk of the court of common pleas he shall issue a subpoena, directed to the sheriff of the county, who shall serve the same and make return according to law; such witnesses may be sworn before any officer authorized to administer oaths and shall thereupon be compelled to answer such questions as are put to them relative to the financial transactions of the board of education. The clerk of the court of common pleas shall certify to all costs arising under these proceedings to the school director, who shall cause the same to be paid in the same manner as now provided by law for the payment of the expenses of the board of education. Said examiners shall deposit said auditor's report and the report of their examination, on or before the fourth Saturday in October, with the school director, who shall cause said examiners' report to be read to the school council at its next regular meeting, and the same shall be published in full in the official proceedings of said meeting, and the school director shall immediately thereafter cause said reports to be published in the annual reports of the board

of education. The auditor shall give bond for the faithful discharge of his duties in the sum of twenty thousand (\$20,000) dollars with not less than two sureties, and which shall be approved by the council and filed with the clerk. The auditor shall receive no compensation for his services as auditor, but the council shall provide for the appointment of such assistants for the auditor as it shall deem necessary, and fix their compensation, which shall be paid monthly out of the school funds, but such assistants shall be appointed by the auditor. (93 v. 517; 89 v. 77.)

(3899-17) **Sec. 17. [Moneys due to board.]** All money due to the board shall be paid to the treasurer upon the warrant of the auditor, which alone shall be sufficient to authorize such payment; no person except the treasurer shall collect or receive any moneys due the board, and any payments made, except to such treasurer, and any receipt given therefor by any person shall be void against the board. (89 v. 77.)

(3899-18) **Sec. 18. [Office of certain auditor abolished.]** The office of auditor of the board of education as provided by section 3980 of the Revised Statutes is hereby abolished; to take effect upon the organization of the board of education, as herein provided. (89 v. 77.)

CONTRACTS.

(3899-19) **Sec. 19. [When contract binding.]** No contract or agreement or obligation shall be binding upon the board unless an appropriation therefor shall have been first made by the council. (89 v. 77.)

(3899-20) **Sec. 20. [When to be in writing, etc.; limitation.]** All contracts involving more than two hundred and fifty (\$250) dollars in amount shall be in writing, executed in the name of the board of education by the school director and approved by the council. When money therefor has been appropriated by the council, the school director may make contracts and purchases not exceeding two hundred and fifty (\$250) dollars in amount at any one time, but all such contracts shall be forthwith reported to the auditor. (89 v. 77.)

(3899-21) **Sec. 21. [Proceedings when cost of proposed improvement exceeds fifteen hundred dollars; exceptions.]** When the school council determines to build, enlarge, repair or furnish a schoolhouse or schoolhouses, or make any improvement or repair, the cost of which will exceed fifteen hundred dollars, except in cases of urgent necessity or for the security and protection of school property, it shall proceed as follows:

1. The school director shall advertise for bids for a period of four weeks, once each week, in not exceeding two newspapers of general circulation in the district; which advertisement shall be entered in full on the records of the school director; and all advertising shall be paid for

Ch. 2

City Districts of the First Class.

at not exceeding legal rates as provided in section 4366 of the Revised Statutes.

2. The bids, duly sealed up, shall be filed with the clerk by 12 o'clock, noon, of the last day stated in the advertisement.

3. The bids shall be opened by the school director at the next meeting of the council, be publicly read by the clerk, and entered in full upon the records of the council.

4. Each bid shall contain the name of every person interested in the same, and shall be accompanied by a sufficient guaranty of some disinterested person that if the bid be accepted a contract will be entered into, and the performance of it properly secured.

5. When both labor and materials are embraced in the work bid for, each must be separately stated in the bid with price thereof.

6. None but the lowest responsible bid shall be accepted, but the school director may, at his discretion, reject all the bids, or accept any bid for both labor and materials which is the lowest in the aggregate for such improvement or repair.

7. Any part of a bid which is lower than the same part of any other bid shall be accepted, whether the residue of the bid is higher or not; and if it is higher, such residue shall be rejected.

8. The contract shall be between the board of education and the bidders, and the board shall pay the contract price for the work when it is completed, in cash, and make up monthly estimates as the work progresses.

9. When two or more bids are equal in the whole or in any part thereof, and are lower than any others, either may be accepted, but in no case shall the work be divided between the makers thereof.

10. When there is reason to believe that there is any collusion or combination among the bidders, or any number of them, the bids of those concerned therein shall be rejected. (89 v. 78.)

GENERAL.

(3899-22) **Sec. 22.** [Impeachment of director or member of council; cost.] Any member of the school council or the director may be impeached for misfeasance or malfeasance in office, by a proceeding in the probate court in the county in which said school district is situated on complaint thereof under oath filed therein by any elector of the school district, signed and approved by four electors thereof; and thereupon such proceedings shall be had and judgment rendered as provided in sections 1732 and 1736, inclusive, of the Revised Statutes, for the impeachment of officers of municipal corporations; and the costs and expenses of the trial shall be charged upon the party filing the complaint, the accused or the board of education or apportioned among them,

as the judge may see fit to direct, and shall be collected as in other cases, provided that no costs or expenses shall be charged to the accused, if he is acquitted. (89 v. 79.)

(3899-23) **Sec. 23.** [**Offices of certain members of board abolished.**] The members of the board of education in city districts of the second grade, first class, in office when this act takes effect, shall continue in office until the school council is organized as herein provided, at which time their powers and duties shall cease and determine, and their offices thenceforth shall be and are hereby abolished. (89 v. 79.)

(3899-24) **Sec. 24.** [**Repeals.**] Section 3899 of the Revised Statutes is hereby repealed; and all provisions of law in force when this act takes effect, which are inconsistent with any provision of this act, shall be held to be superseded by the latter, as to the matter of inconsistency, and not otherwise, as to city districts of the second grade of the first class. (89 v. 79.)

CLEVELAND PENSION FUND.

(3899a) **Sec. 1.** [**Teachers' pension fund established.**] A teachers' pension fund shall be established in cities of the second grade of the first class. (94 L. L. 539.)

(3899b) **Sec. 2.** [**How created.**] It shall be the duty of the treasurer of the board of education in cities of the second grade of the first class to reserve at each payment one per cent. (1%) of such installment of the salary of each regular teacher, principal, supervisor or superintendent of instruction of said city district up to a maximum salary of twelve hundred dollars (\$1,200) yearly, for any one teacher, principal, supervisor or superintendent, and to place the amount so reserved in the teachers' pension fund. (94 L. L. 539.)

(3899c) **Sec. 3.** [**Teachers retired within twenty-five years; deduct part of pension.**] It shall be the duty of the treasurer to reserve in the pension fund from the pension of each person who shall have been retired by the retiring board within twenty-five years from the time this act goes into effect, one per cent. (1%) of his or her pension for the balance of the twenty-five years. (94 L. L. 539.)

(3899d) **Sec. 4.** [**Examination fees of teachers to be paid into fund.**] It shall be the duty of the said treasurer to collect and to place in this teachers' pension fund all fees for examination of teachers given by the city board of examiners. (94 L. L. 539.)

(3899e) **Sec. 5.** [**Legacies, bequests and donations.**] It shall be the duty of the said treasurer to receive all legacies, bequests and donations to the fund and to place the same in the fund. (94 L. L. 539.)

(3899f) **Sec. 6.** [**Membership of retiring board.**] It shall be the duty of the teachers, in September of 1900, to elect three of their number, one for three years, one for two years and one for one year; and there-

after each September to elect one member to serve for three years; these three members, together with the superintendent of instruction and the president of the school council of said city, shall constitute and be a retiring board. (94 L. L., 539.)

(3899g) **Sec. 7. [Officers of board; compensation.]** The retiring board shall at once choose a president and secretary from its own number; it shall have the power to pay the secretary, or to pay an assistant, from this fund, not to exceed three hundred dollars (\$300) per year. (94 L. L. 539.)

(3899h) **Sec. 8. [Trustees of fund; bond.]** This board shall choose two business men, who with the city treasurer, shall act as trustee of this fund, to invest whatever amount is not needed for current pension claims. Said two business men thus chosen shall hold their said office for three (3) years and until their successors are chosen and qualified, and shall give bond for the faithful performance of their duties in such sum as the said retiring board may order. Vacancies in said office of trustees, except the city treasurer, shall be filled for the unexpired term by the said retiring board. (94 L. L. 539.)

(3899i) **Sec. 9. [Power of retiring board.]** This retiring board shall have full power in the pensioning of teachers, in accordance with this act. (94 L. L. 539.)

(3899k) **Sec. 10. [Pensions shall not be paid for five years.]** No pensions shall be paid from this teachers' pension fund for five (5) years from the time this act goes into effect. (94 L. L. 539.)

(3899l) **Sec. 11. [Retirement of teacher; amount of pension.]** After twenty-five years of teaching, four-fifths of which time shall be in the public schools of cities of the second grade of the first class, a teacher, upon the recommendation of the superintendent of instruction, may be retired by a majority vote of the retiring board, with a pension of one-half pay, yearly, providing in no case shall this pension exceed six hundred dollars (\$600) yearly. (94 L. L., 539.)

(3899m) **Sec. 12. [Amount of pension in case of disability.]** From total disability on account of teaching a (teacher), principal, supervisor or superintendent shall be retired by the retiring board and shall receive, after five years from the time this law goes into effect, as indicated, that part of one-half salary which his or her years of experience in said city schools bear to thirty years. In no case is the half-salary to exceed six hundred dollars (\$600) yearly. (94 L. L., 540.)

(3899n) **Sec. 13. [Rebate to teacher on removal or non-appointment.]** Any teacher removed after the five years, or failure of reappointment by the superintendent of instruction, shall be entitled to and shall receive from the trustees, all moneys deducted from his or her salary after the said five years, as indicated in section 10. (94 L. L., 540.)

(38990) **Sec. 14.** [When teacher must be retired; amount of pension; one per cent. deducted; pension to cease upon re-employment.] After thirty years' experience in teaching, four-fifths of which time (twenty-four years) shall be in the public schools of said cities of the second grade of the first class, a teacher, principal, supervisor or superintendent must be retired by the retiring board, upon the written request of the teacher, principal, supervisor or superintendent, at a pension equal yearly to one-half of his or her salary at the time, providing that in no case shall the half salary be more than six hundred dollars (\$600), and providing that the clause in this section referring to four-fifths time in schools in cities of the second grade of the first class shall not apply to teachers, principals, supervisors or superintendents who are in said schools when this act goes into effect, and providing further that any person who shall be retired within twenty-five years from the time this act goes into effect shall have one per cent. (1%) deducted from his or her pension for the balance of the said twenty-five (25) years, according to section 3. If any one drawing a pension under this section from the said teachers' pension fund shall again enter the public schools as a regular teacher, principal, supervisor or superintendent, his or her pension shall cease. (94 L. L., 540.)

(38991) **Sec. 15.** [Pension to cease on death or resignation.] The death or voluntary resignation of any teacher, principal, supervisor or superintendent shall terminate all interest of said person in said pension fund. (94 L. L., 540.)

TOLEDO.

(3899-25) **Sec. 1.** [Board of education in Toledo; number; election; meetings.] All boards of education in city districts of the third grade of the first class shall consist of five members, all of whom shall be elected by the qualified electors for school purposes residing in such city, and such board shall meet on the first and third Mondays of each month during the school year, and it may hold such special meetings as it may deem necessary. (93 v. 485.)

(3899-26) **Sec. 2.** [Election of members.] Not less than ten days before any school election, legal voters of either sex at such election, may present names of candidates for election on such school board to the board of elections of the county in which such district is situated, and whenever such candidates shall be endorsed in writing by two hundred of the legal voters of either sex and shall be presented to the board of elections not less than ten days prior to such election, the board of elections shall publish the names of such candidates in the daily papers of the city and prepare ballots which shall contain all the names of such candidates, which ballots shall be voted at the election and deposited in a separate ballot-box provided by the board of elections for the [that]

Ch. 2.

City Districts of the First Class.

purpose. Each elector may mark and vote for as many of such candidates on said ballot as there are members to be elected. (93 v. 485.)

(3899-27) **Sec. 3. [Number of members; terms.]** At the first election of such board, which shall be held on the first Monday in April, 1898, five members of the board shall be elected. The candidate receiving the highest number of votes cast shall be elected to serve for five years; the candidate receiving the second highest number of votes cast, shall be elected to serve for four years; the candidate receiving the third highest number of votes cast, shall be elected to serve for three years; the candidate receiving the fourth highest number of votes cast, shall be elected to serve for two years, and the candidate receiving the fifth highest number of votes cast shall be elected to serve for one year. At the regular annual municipal election each year after the first election one member shall be elected for five years to succeed the member whose term expires with the current year. (93 v. 625, 485.)

(3899-28) **Sec. 4. [Powers of board.]** The board shall have power to provide for the appointment of all necessary teachers and employes, prescribe their duties and fix their compensation; and it may make such rules and regulations for its own government as it may deem necessary. It shall have power to issue bonds for the improvement or purchase of property and erection of school buildings, in any amount not exceeding an aggregate tax at the rate of two mills for the year next preceding such issue, under the restrictions specified in sections thirty-nine hundred and ninety-three (3993) and thirty-nine hundred and ninety-four (3994) of the Revised Statutes. Such board shall also have the powers specified in section thirty-nine hundred and ninety-four *b* (3994*b*) relative to refunding bonded indebtedness, and it shall have all the powers and perform all the duties which by existing laws are vested in and to be exercised by boards of education in cities of the third grade of the first class relative to any library board and university board therein or otherwise. (93 v. 486.)

(3899-29) **Sec. 5. [Organization; president; committees; superintendent of instruction; clerk of board.]** The board shall organize on the third Monday of April, 1898, and annually thereafter. The member of the board whose term shall expire at the end of the current year shall be president of the board for such current year, and shall have sole power to appoint all standing and other committees of said board. The board shall at its first meeting, or as soon thereafter as may be, employ a superintendent of instruction, and also a business manager for a term not to exceed two years. The business manager shall also be clerk of the board, and discharge all the duties imposed by law upon such office. (93 v. 486.)

(3899-30) **Sec. 6. [Powers of superintendent; report; attending meetings.]** The superintendent of instruction shall have the power to

appoint and discharge, subject to the approval and confirmation of the board, all teachers and assistants, authorized by the board to be employed. He shall report in writing to the board monthly and oftener, if required, as to all matters under his supervision, and may be required by the board to attend any or all of its meetings. (93 v. 486.)

(3899-31) **Sec. 7. [Business manager; duties; powers; ex officio member of board; report of board; bond.]** The business manager shall be the principal executive officer of the board, by whom his duties shall be prescribed. He shall be ex officio member of the board with the privilege of speaking but not of voting. Except as to teachers and assistants he shall have the appointment and discharge of all employes of the board, subject to the approval and confirmation of the board. He shall report to the board monthly, and oftener if required, as to all matters under his supervision and shall attend all meetings of the board. He shall devote his entire time to the duties of his office, and shall give a bond for the faithful discharge of his duties as business manager and clerk of the board of education in such sum as the board may determine, with sureties to be approved by the board, which bond shall be deposited with the president of the board within ten days after his appointment. (93 v. 486.)

(3899-32) **Sec. 8. [Report of business manager; duties.]** The business manager shall submit to the board monthly and oftener, if required, a report of the accounts of the board exhibiting the revenues, receipts, disbursements, assets and liabilities of the board, sources from which the revenues and funds are derived and in what manner the same have been disbursed. He shall keep an accurate account of all taxes levied for school purposes and of all moneys due to, received and disbursed by the board; also of all assets and liabilities of, and of all appropriations made by the board, and shall receive and preserve all vouchers for payments and disbursements made to or by the board. He shall issue all warrants for the payment of money from the school fund, but no warrant shall be issued for the payment of any claim until such claim has been approved by the board, and the payroll for assistants in school work and teachers shall be countersigned by the superintendent of instruction. (93 v. 486.)

(3899-33) **Sec. 9. [Suspension or removal of superintendent, business manager or clerk.]** The board may at any time for cause suspend or remove the superintendent of instruction, the business manager or clerk, but said officer or officers shall not be suspended or removed unless charges are preferred, in writing, and they be afforded an opportunity to bring or offer testimony in their defense, which testimony shall be received and considered by said board and made a part of the records. (93 v. 487.)

(3899-34) **Sec. 10. [City treasurer ex officio treasurer of board; bond; compensation.]** The city treasurer of such city shall be ex

officio the treasurer of the board of education in such district. He shall give bond to the board in such sum as shall be required by the board; and it may award him such compensation as it may deem reasonable, and pay the same from the school funds of the district. (93 v. 487.)

(3899-35) Sec. 11. [Payments of money due board; who may collect or receive moneys.] All money due to the board shall be paid to the treasurer upon the warrant of the business manager, which alone shall be sufficient to authorize such payments; no person except the treasurer shall collect or receive any moneys due to the board, and any payments made, except to such treasurer, and any receipt given therefor by any other person shall be void as against the board. (93 v. 487.)

(3899-36) Sec. 12. [How money to be drawn from treasury.] No money shall be drawn from the treasury except in pursuance of appropriation made by the board, and whenever an appropriation is made by the board the business manager shall forthwith give notice thereof to the treasurer. No appropriation shall be made for a longer period than for the end of the current year, and at the end of each year all the unexpended balances of appropriations shall revert to the school fund. (93 v. 487.)

(3899-37) Sec. 13. [How contract involving more than two hundred and fifty dollars to be made.] All contracts involving more than two hundred and fifty dollars (\$250) in amount shall be, in writing, executed in the name of the board of education by the business manager and approved by the board. When the money therefor has been appropriated by the board, the business manager may make contracts and purchases not exceeding two hundred and fifty dollars (\$250) in amount, at any time, but all contracts shall be forthwith reported to the board. (93 v. 487.)

(3899-38) Sec. 14. [Contracts for building, enlarging, etc., school house or making improvements the cost of which exceeds fifteen hundred dollars; exceptions.] When the board of education determines to build, enlarge, repair or furnish a school-house or school-houses, or make any improvements or repairs, the aggregate cost of which shall exceed \$1,500, except in cases of urgent necessities, or for the security and protection of school property, it shall be as follows:

1. The business manager shall advertise for bids for the period of four weeks, once each week, in not exceeding two newspapers of general circulation in the district; which advertisements shall be entered in full on the records of the board and all advertisements shall be paid for at not exceeding legal rates, as provided in section 4266 of the Revised Statutes.

2. The bids sealed up shall be filed with the business manager at 12 o'clock noon, of the last day stated in the advertisement.

3. The bids shall be opened by the business manager at the next meeting of the board, be publicly read by the business manager and entered in full upon the records of the board.

4. Each bid shall contain the name of every person interested in the same, and shall be accompanied by a sufficient guarantee of some disinterested person or company, that if the bid be accepted the contract will be entered into and the performance of it duly secured.

5. When both labor and material are embraced in the work bid for, each must be separately stated in the bid with the price thereof.

6. None but the lowest responsible bidder shall be accepted, but the board may reject all the bids, or accept any bid for both labor and material, which is the lowest in the aggregate for such improvement or repair.

7. Any part of the bid which is lower than the same part of any other bid, shall be accepted, whether the residue of the bid is higher or not, and if it is higher, such residue shall be rejected.

8. The contract shall be between the board and the bidders, and the board shall pay the contract price for the work when it is completed and accepted, in cash, and make monthly estimates of the work as it progresses.

9. When two or more bids are equal in the whole or in any part thereof, and are lower than any others, either may be accepted, but in no case shall the work be divided between the makers thereof.

10. When there is reason to believe that there is any collusion or combination among the bidders, or any number of them, the bids of those concerned therein shall be rejected. (93 v. 487.)

(3899-39) Sec. 15. [Members in office when this act goes into effect to continue until school board herein provided for organizes.]

The members of the board of education, in cities of the third grade of the first class, in office when this act takes effect, shall continue in office until the school board is organized as herein provided, at which time their powers shall cease and determine, and their offices thenceforth shall be and are hereby abolished. (93 v. 488.)

TOLEDO PENSION FUND.

(3899-40) Sec. 1. [Toledo teachers' pension fund created.] In order to create a fund to be known as the school teachers' pension fund, one per cent. (1%) of the salaries, paid to all teachers of city districts of the third grade of the first class, shall be deducted by the proper officers and paid into the city treasury to the credit of said fund, to be used exclusively for pensions for teachers as hereinafter provided. All moneys

received from donations, legacies, gifts, bequests or from any other source shall also be paid into said fund; but no taxes shall be levied or any public moneys be appropriated for said fund, except as herein provided. (92 v. 683.)

(3899-41) Sec. 2. [Membership of board of trustees; investment of fund; rules and regulations.] Said school teachers' pension fund shall be under the charge, management and control of a board to be known as the board of trustees of the school teachers' fund, composed of seven members, three elected by the board of education of said city district, three to be elected by the teachers of the public schools, and the superintendent of schools of said city district who, ex officio, shall be a member of said board. The board of education of said city district shall, at its first regular meeting after this act goes into effect, elect three of its members, one for one year, one for two years, and one for three years and thereafter annually elect one of its members for three years, who shall serve as members of said board; the teachers of the public schools of said city district shall, within thirty days after this act goes into effect, at a meeting to be called by the superintendent of schools of said city district, elect three of their number, one for one year, one for two years, and one for three years, and thereafter annually at a meeting to be called in the same manner, elect one of their number for three years, who shall serve as members of said board. The members of said board shall serve until their successors are elected and qualified. Said board of trustees shall have power to invest said pension fund in the name of said board in bonds of the United States, or of the state of Ohio, or of any county in this state, or of any municipal corporation in this state, or of any school district of this state, and said board shall have power to make payments from said pension fund of pensions granted in pursuance of this act. Said board of trustees shall also have power from time to time to make and establish such rules and regulations for the administration of said pension fund as they shall deem best. (92 v. 683.)

(3899-42) Sec. 3. [Retirement of teacher, voluntary and involuntary; "teacher" defined; amount of pension.] Said board of education of said city district shall have power by a majority vote of all the members composing said board to retire on account of physical or mental disability any male or female teacher under such board who shall have taught for a period aggregating twenty (20) years, whether before or after, or partly before or after the passage of this act; provided, however, that three-fifths of said period of service shall have been rendered by said beneficiary in the public schools of said city district or in the public schools of the county in which said city district is located. The term "teacher" under this act shall include all superintendents of instruction, principals, special teachers, and teachers.

employed by said board. Any female teacher shall have the right to retire and become a beneficiary under this act who shall have taught for a period aggregating thirty (30) years, whether before or after, or partly before or after the passage of this act, and any male teacher shall have the right to retire and become a beneficiary under this act who shall have taught for a period aggregating thirty-five (35) years, whether before or after, or partly before or after the passage of this act; provided that three-fifths of said term of service shall have been rendered in the public schools of said city district, or in the public schools of the county in which said district is located. Each teacher so retired or retiring shall be entitled during the remainder of his or her natural life to receive as pension an amount equal to one-half of the annual salary paid to such teacher at the date of his or her retirement, said pension to be paid monthly during the school year, but in no event shall such pension paid to any teacher exceed the sum of six hundred (600) dollars in any one year; provided further that if said pension fund shall at any time be insufficient to meet the pensions so provided for, that during the period that such fund is insufficient to make such payments, the amount in said fund during said period shall be prorated between the parties entitled thereto. No payment shall be made to any beneficiary, nor shall any teacher retired or retiring be entitled to any payment under the provisions of this act prior to July 1, 1899. (92 v. 683.)

(3899-43) Sec. 4. [Power of board over fund.] Said board of trustees shall have the power to use both the principal and income of said fund for the payment of the pensions herein provided for. (92 v. 683.)

(3899-44) Sec. 5. [Clerk of board of education to report amounts paid into fund.] The clerk of the board of education of said city district shall certify monthly to said board of trustees all amounts deducted from the salaries of the teachers aforesaid, which amounts as well as all other moneys contributed to said fund shall be set apart as a special fund for the purposes herein specified, subject to the order of said board of trustees. All moneys belonging to said fund shall be paid only on the order of said board of trustees entered upon its minutes on warrants signed by the president and secretary of said board. (92 v. 683.)

(3899-45) Sec. 6. [City treasurer made treasurer of fund; bond; compensation.] The city treasurer of said city of the third grade of the first class located wholly or partly in said city district shall be the custodian of said pension fund and shall keep the same subject to the order, control and direction of said board of trustees. He shall keep books of account concerning said fund in such manner as may be prescribed by said board, which books of accounts shall always be subject

to the inspection of said board of trustees or of any member thereof. Said treasurer shall execute a bond to said board of trustees with good and sufficient sureties in such sum as said board of trustees shall require, which bond shall be subject to the approval of said board and be conditioned for the faithful performance of his duties as custodian of said fund and treasurer of said board. He shall always keep and truly account for all moneys and profits coming into his hands as such treasurer belonging to such fund, and at the expiration of his term of office, shall pay over, surrender and deliver to his successor all securities, moneys, and other property of whatsoever kind, nature and description which may be in his hands or under his control as treasurer aforesaid. Said treasurer shall be paid for his services under this act a compensation not to exceed one per cent. annually of the amount paid into said fund during the year. (92 v. 683.)

(3899-46) **Sec. 7.** [Death, resignation or removal for cause terminates interest in fund; relief may be afforded in case of accident or sickness.] The death, resignation or removal of any teacher for cause as aforesaid, shall terminate all interest of said teacher in said fund. but it shall be optional with the board of trustees of said pension fund to appropriate monthly to any teacher who has become disabled by accident or sickness to such an extent as to be incapacitated for teaching, a sum not to exceed one-half of said teacher's regular monthly salary, provided that said teacher shall have taught at least ten years in the public schools of a city district of the third grade of the first class, and providing that such monthly appropriation shall not continue for a longer period than ten months or one school year. (92 v. 683.)

Sec. 3900. [Where certain electors to vote; plats of attached territory.] An elector residing in the city district, but not in any ward of the city, shall be entitled to vote in the ward to which he is attached by the board of education for school purposes; but an elector residing in the city, and not in the city district, shall not be entitled to vote at any election provided for in this chapter; the board shall ascertain whether the city limits are coextensive with the limits of the school district; and in case the school district includes territory without the corporate limits, the board shall make or cause to be made a plat of the territory so attached for school purposes, designating thereon by metes and bounds the ward or wards to which such attached territory is to be thereafter assigned; which plat shall be recorded as a part of the proceedings of the board. (70 v. 195, §§ 10, 11.)

Sec. 3901. [Conduct of elections.] The election provided for in section *thirty-eight hundred and ninety-seven (nine)* shall be conducted by the judges and clerks of the city elections, and they shall make

returns of such election to the board of education within five days from the time of holding the same. (70 v. 195, § 13.)

Female suffrage in school elections; see Sec. 3970-10.

For conduct of elections; see notes under Secs. 3909, 3916, and 3917.

Sec. 3902. [How electors on attached territory to cast ballots.]

The judges and clerks of city elections, in the wards to which any territory beyond the city limits has been attached by the board of education for school purposes, shall have two separate ballot-boxes and two sets of poll-books; the electors residing on such attached territory may vote at all regular and special elections in such wards for members of the board of education; the judges of election in such wards shall receive the ballots of the electors residing on such attached territory, and deposit them in the ballot-box provided for that purpose; the clerks of election shall enter upon the separate poll-books provided for that purpose the names of such electors so voting; and due returns of such elections for members of the board shall be made as provided by section *thirty nine hundred and one*. (70 v. 195, § 12.)

Sec. 3903. [Time of regular meetings of boards of education; special meetings, etc.] The board of education, except in cities of the first class, second grade, shall hold regular meetings once every two weeks. In cities of the first class, second grade, said board shall hold its meetings on the first and third Monday of each month following the third Monday of April, and in all city districts of the first class, said board may hold such special meetings as it may deem necessary; it may fill all vacancies that occur in the board until the next annual election, and may make such rules and regulations for its own government as it may deem necessary; but such rules and regulations must be consistent with the constitution and laws of the state. (1882, March 29; 79 v. 59; Rev. Stat. 1880; 70 v. 195, § 14.)

As to manner of filling vacancies in board of education; see Sec. 3981.

As to classification of cities; see Secs. 1547, 1548; also Secs. 3886, 3887.

(3903-1). [Columbus: power of school board to donate certain land for park purposes.] School boards in cities of the first grade of the second class owning land, which is no longer used for school purposes, adjoining any public park, may convey the same to the city or county owning such park, and in which such land is situated, to be held and used as a part of said park. (84 v. 108.)

See Sec. 3971.

Canton board of education, number and election. 90 L. L., 450.

Ironton board of education to consist of two from each ward. 85 v. 108.

 Ch. 3. City Districts of the Second Class and Village Districts.

CHAPTER 3.

CITY DISTRICTS OF THE SECOND CLASS AND VILLAGE DISTRICTS.

SECTION.

3904. Membership of board of education.
 3904-1. Members of board of education in village and special districts in Hamilton county.
 3905. Election of members in city districts.
 3906. Conduct of election of members of board of education in city districts, second class.
 3907. Election, when as many members as wards.

SECTION.

3908. Election in village districts.
 3909. Notice of elections.
 3910. Returns to be made to board.
 3911. How membership increased.
 3912. How village may become village district.
 3913. How village district organized.
 3914. Organization of board.

A councilman during his term of office is ineligible to the office of a member of a board of education. 15 C. C., 163.

Sec. 3904. [Membership of board of education.] In city districts of the second class, and in village districts, the board of education shall consist of six members, except in districts organized under a law providing for only three members, who shall have the qualifications of an elector therein, and in such districts the membership may be increased to six, in the manner hereinafter provided; but the board of a city district of the second class may provide, by a vote of a majority of its members, that the board shall consist of as many members as the city has wards; provided, that in no such city district, the number of members composing such board shall be less than six. (91 v. 87; 70 v. 195, §§ 16, 17.)

Boards of education in village districts in Greene county, constitution and election of. 93 v. 713.

Election of board of education in Fremont by districts of one ward each. 91 v. 511.

(3904-1). [Members of board of education in village and special districts in Hamilton county.] In village districts, in the county of Hamilton, the board of education shall consist of five members, except in districts organized under a law providing for only three members, who shall have the qualification of an elector therein, and in such districts the membership may be increased to five, and only one member shall be chosen at the next annual election for school officers, to serve for three years; and annually thereafter, two, except every third year, when only one judicious and competent person shall be elected, and if the board consists of three members, one such person shall be elected each year; provided, that in each special district in said county, where the board of education now consists of six members, there shall be chosen at the next annual election for school officers by ballot on the second Monday of April, one member to serve for three years and annually thereafter two members to serve for three years, except every third year, when only one person shall be elected to serve for three years; five days' notice

shall be given of such election. The members of such boards now in office and those hereafter elected shall serve until their successors are elected and qualified; provided, further, that the first election under this act in a village district shall not take place until the first Monday of April, 1884. (80 v. 310.)

Sec. (3904-1) (cited in the following case as Sec. 8035-213, being its number in Smith & Benedict's statutes) is an exception to Sec. 3904, 7 C. C., 1, 3.

Sec. 3905. [Election of members in city districts.] In city districts of the second class, except such as are mentioned in section thirty-nine hundred and seven, members of the board of education shall be elected annually, to serve for the term of three years from the third Monday of April succeeding their election, and until the election and qualification of their successors; if the board consists of six members, two judicious and competent persons shall be elected each year; and if the board consists of three members, one such person shall be elected each year. (75 v. 53, § 18.)

Female suffrage in school elections; see Sec. 3970-10.

Supervision and conduct of elections; see Secs. 2906-1 and 2908-13.

Election of board of education in Defiance and Middletown. 91 v. 503.

Sec. 3906. [Conduct of election of members of board of education in city districts, second class.] If the boundaries of the district and [the] city are identical, or, if territory has been detached from the city and attached to another district, the election shall be conducted exclusively by the judges and clerks of the city election, but electors residing within the bounds of such detached territory shall not vote thereat; but if territory outside the city limits is attached to the district, an election shall also be held for the same purpose in the township from which it was detached, and conducted by the judges and clerks of the township election, but only electors residing within the bounds of such territory shall vote thereat; the election shall be held at the same time and places as the election for city or township officers shall be held; the names of candidates for such member shall be upon separate tickets, and all such tickets voted shall be deposited in separate ballot-boxes, which shall be provided by the board of education; separate poll-books of the election shall be kept, and returns of the election shall be made to the clerk of the city which constitutes the district. (1886, April 14: 83 v. 82; 82 v. 6; Rev. Stat. 1880, 75 v. 53, § 18.)

Sec. 3907. [Election after membership increased.] In a city district of the second class, in which the board consists of as many members as the city has wards, there shall be elected biennially, in each ward, at the time and in the manner provided in the preceding chapter for election in city districts of the first class, one competent and judicious person to serve as a member of the board

Ch. 3.

City Districts of the Second Class and Village Districts.

for two years from the third Monday of April succeeding his election, and until the election and qualification of his successor; but at the first election after it is decided that the board shall be so constituted, the persons elected in wards designated by odd numbers shall serve for only one year from the third Monday of April succeeding their election, and until the election and qualification of their successors; and the board shall ascertain the limits of the district, assign attached territory to wards, and make and record a plat thereof, as provided in section *thirty-nine hundred*. (75 v. 53, § 18; 70 v. 195, § 101.)

Sec. 3908. [Election in village districts.] In village districts members of the board of education shall be elected on the first Monday of April annually, to serve for the term of three years from the third Monday of April succeeding their election, and until the election and qualification of their successors; if the board consists of six members, two judicious and competent persons shall be elected each year, and if it consists of three persons, one such person shall be elected each year; provided, that when the village of which the village district is, in whole or in part, composed, is divided into wards or voting precincts, the election for members of the board of education shall be held in each of such wards or precincts; but all the members shall be elected at large by the electors of the district, and voters residing in such wards or precincts who are also residents of the school district, shall vote for member of the board of education in the ward or precinct in which they reside. The election for members of the board of education in such wards or precincts shall be held by the same judges and clerks provided for the municipal or township election, and returns of such election, duly certified as in other cases, shall be made within five days to the clerk of the board of education of any such district. (91 v. 121; 88 v. 494; 75 v. 53, § 18.)

Conduct of elections; see notes under Secs. 3909, 3916, and 3917.

Conduct of elections in villages of less population than 500, situated in two or more counties; see Sec. 2926c-1, R. S.

The inhabitants of the village district and not those of the village itself can vote. 4 C. C., 72, 75.

Sec. 3909. [Notice of elections.] The clerk of the board of education of each city district of the second class, and of each village district, shall publish a notice of the election and meeting provided for in the preceding sections, in a newspaper of general circulation in the district, or post written notices of such meeting in five of the most public places, in the district, at least ten days before the holding of the same, which notice shall specify the time and place of the election or meeting and the number of members to be elected. (75 v. 53 19.)

The omission of the sheriff [clerk] to mention in his notice one of the vacancies to be filled is not *conclusive* evidence of the invalidity of the election. Taken in *connection* with other circumstances, it is competent evidence of fraud or conspiracy. 15 O. S., 137; 26 O. S.,

216. But if the sheriff [clerk] fails to give such notice for one of the vacancies to be filled, and in consequence of such neglect, only a small minority of the electors present vote for a person to fill such vacancy, such election is irregular and invalid. 15 O. S., 532.

McCrory on Elections, § 135, says: "It must be conceded that time and place are of the substance of every election, while many provisions which appertain to the manner of conducting an election may be directory only. [Dickey v. Hulburt, 5 Cal., 343.] But it does not follow that due notice of time and place of holding an election is always essential to its validity. Whether it is so or not depends upon the question whether the want of due notice has resulted in depriving any portion of the electors of their rights." 13 N. Y., 350; 12 Mich., 508; see also Foster v. Scarf, 15, O. S., 532.

The general rule in computation of time *within* which an act is to be done is to exclude the first day and include the last. 16 O. S., 208, 209.

If an emergency should occur, making it necessary to change the place of holding the election after the regular notice has been given, and if such notice is given as would leave no excuse for not voting on account of the change, the election would not be invalidated by such change. 78 Illinois, 171.

Sec. 3910. [Returns to be made to board.] The secretary of the meeting or clerks of elections in village districts provided for in this chapter shall keep a poll-book and tally-sheet, and return the same within five days after the election to the clerk of the board of education of the district, duly certified. (75 v. 53, § 20.)

Sec. 3911. [How membership increased.] When the electors of a city district of the second class, or of a village district, the board of education of which consists of three members, desire that the board shall consist of six members, they may make such change in the manner following: Written or printed notices shall be posted in at least five of the most public places in the district, at least ten days prior to the day designated therein, signed by a majority of the members of the board of education, or by one member of the board and at least ten resident electors of the district requesting the qualified electors of the district to assemble on a day, and at an hour and a place, to be designated therein, then and there to vote for or against such change; the electors, when assembled in accordance with the notice, shall appoint a chairman and two clerks, who shall be judges of the election; the electors in favor of the proposed change shall have written or printed upon their ballots the words, "Board — change," and those opposed thereto the words "Board — no change," and the ballots cast shall determine the question whether the change shall be made; the judges shall make due return of the election to the board of education of the district, within ten days after the holding of the same; and if a majority of the votes cast be found to be in favor of the change, three additional members of the board shall be chosen at the next annual election for school officers, one to serve for one year, one for two years, and one for three years, and annually thereafter two members of the board shall be chosen to serve for three years, as provided in section *thirty-nine hundred and five*. (70 v. 195, § 21.)

Sec. 3912. [How village may become village district.] When the electors of a village desire to erect it into a village district, they may proceed in the following manner: Written or printed notices, signed by not less than five electors, resident of the village, shall be posted, at least ten days prior to the day designated therein in at least five of the most public places within the village, requesting the electors thereof to meet for the purpose of voting on the question of establishing a village district, on a day, and at an hour and a place, to be designated in the notices; the meeting shall be held within the limits of the village, between the hours of six o'clock a. m. and six o'clock p. m., and the polls shall be kept open at least six hours; the electors, when assembled in accordance with the notice, shall appoint a chairman and two clerks, who shall be judges of the election; the electors in favor of the proposed village district shall have written or printed on their ballots the words, "Village district, yes," and those opposed thereto the words, "Village district, no," and the votes cast shall determine the question whether such village district shall be established; if a majority of the votes cast at such election be opposed to the establishment of such village district, the question of establishing the same shall not again be submitted to the electors of the village until the succeeding regular annual election for village officers, and then only upon notice being given as above provided; and if a majority of the votes cast at such election be in favor of the establishment of such district, the village may be organized as a village district in the manner provided in the next two sections. (74 v. 140, § 4.)

Division of township school funds upon the creation of special and village districts; see Sec. 3946a.

A township high school does not pass to a village incorporated out of the territory including it by reason of a general saving clause in the act of 1873. 41 O. S., 680.

Notices of election; see notes under Sec. 3909.

Under the act of March 14, 1853 (51 v. 429), when an incorporated village was formed within or to include a material portion of a sub-district, no portion thereof is, by reason of such incorporation, withdrawn from the school jurisdiction of the township, but the whole continues to be a sub-district until the actual election or appointment of a separate school board, and the portion of a sub-district not included within the limits of such incorporated village, is "territory annexed for school purposes" within the meaning of the act. 21 O. S., 339.

Sec. 3913. [How village district organized.] Written or printed notices, signed by not less than five electors residing within the limits of the village, shall be posted in at least five of the most public places therein, requesting the electors of the village to meet for the purpose of electing a board of education for such proposed village district, on a day, and at an hour and a place, designated in the notices, which notices shall be posted at least ten days prior to the day designated in them for such meeting; the electors, when assembled in accordance with the notice shall appoint a chairman and two clerks, who shall be judges of the election, and shall then choose by ballot six competent and judicious

persons to serve as members of the board of education of the proposed district — two to serve for one year, two to serve for two years and two to serve for three years, from the third Monday of April next preceding the organization of the district, and until the election and qualification of their successors; but if the election be held on the day of the annual election of school officers, there shall be elected two persons to serve for one year, two for two years, and two for three years from the third Monday of April succeeding their election and until the election and qualification of their successors. (71 v. 55, § 5.)

Sec. 3914. [Organization of board.] If such election be held on the first Monday of April, the board elected thereat shall organize at the time and in the manner provided in section *thirty-nine hundred and eighty*; but if the election be held at any other time, the board shall organize on the next Monday thereafter, and in the same manner. (71 v. 55, § 6.)

CHAPTER 4.

TOWNSHIP AND SPECIAL DISTRICTS.

SECTION.

3915. Township board of education; how constituted and organized.
3916. Directors; first election; classes; sub-directors; election; terms; subsequent elections.
3917. Notice of election; designation of office to be filled; election, where held; judges' oath.
3918. Board of sub-directors; record of proceedings; sessions; notice of meeting to elect teachers.
3919. Repealed.
3920. Regular and special session; how special sessions called; standing committees; duties of committees; action of committee not binding.
3921. Map of township district; suspension of school in sub-district; conveyance of pupils to other district; cost; change of sub-districts.
- 3921-1. Centralization defined.
- 3921-2. Submission of question of centralization to vote, compulsory on petition.
- 3921-3. Conduct of elections.
- 3921-4. Issue of bonds to be submitted to vote.

SECTION.

- 3921-5. Reorganization of board of education in centralized townships.
- 3921-6. Prior existing board abolished; its successor.
- 3921-7. Township clerk and treasurer ex-officio members of board; laws governing board.
- 3921-8. Graded course of instruction required; high school; transportation of pupils.
3922. Election in new sub-district; notices; election, how conducted; term of director; term of sub-directors determined by lot; term of directors and sub-directors of consolidated districts terminate.
3923. Board of special district, how constituted, and how increased.
3924. Election of members.
3925. Notice and conduct of election.
3926. How special or village district abandoned; withdrawal of sub-districts from special districts.
3927. Election when special district abandoned; property in custody of clerk; notice to county auditor; property in custody of treasurer; unfinished business; debts; special tax.

As to schools of higher grades; see Sec. 4009.

In case of change or annexation; see Sec. 3893.

As to joint township high school district; see Secs. 3928, 3929.

To empower township boards of education to establish township or joint township high schools and to discontinue sub-district schools when too small to justify continuance; see Sec. 4009-15.

Graduating examinations of pupils from sub-districts and special districts; see Sec. 4029-1.

TOWNSHIP DISTRICTS.

Election of teachers in sub-districts; see Sec. 4017.

See note under Sec. 3912, 21 O. S., 339.

Sec. 3915. [Township board of education; how constituted and organized.] The board of education of each township district divided into subdistricts shall consist of the township clerk, and one director elector [elected] for a term of three years for each subdistrict; such board shall organize on the third Monday in April of each year by electing one of its members president. The clerk of the township shall be ex-officio the clerk of the board, but shall have no vote except in cases of a tie. (90 v. 45; 89 v. 93; 70 v. 195, §§ 26, 29; 70 v. 241, § 44; S. & C. 1350.)

Quo warranto is the proper remedy to try a title to an office. 57 O. S., 371.

Sec. 3916. [Directors; first election.] There shall be elected by ballot on the second Monday of April, 1893, in each subdistrict, by the

qualified electors thereof, one competent person, having the qualifications of an elector therein to be styled director.

[Classes.] Those elected shall be divided upon the third Monday of April thereafter by lot, into three classes as nearly equal as possible; the directors of the first class shall serve for the term of one year, the directors of the second class for two years, and the directors of the third class for three years.

[Subdirectors; election; terms.] And there shall be elected on the second Monday of April, 1898, in each subdistrict, by the qualified electors thereof, two competent persons, having the qualifications of electors therein, to be styled subdirectors. In all subdistricts where directors are elected in 1898, one subdirector shall be elected for the term of one year, and one for the term of two years; in all subdistricts where directors shall be elected in 1899, one subdirector shall be elected for the term of two years, and one for the term of three years, and in all subdistricts where directors shall be elected in 1900, one subdirector shall be elected for the term of one year, and one for the term of three years.

[Subsequent elections.] All elections of directors or subdirectors thereafter shall be held on the second Monday of April, and all directors or subdirectors shall serve until their successors are elected and qualified. (93 v. 45; 89 v. 93; 75 v. 81, § 27; S. & C. 1347.)

Australian ballot law does not apply; see Sec. 2966-13.

Vacancies in office of sub-director; see Sec. 3981.

When the legislature has fixed by law the time for holding an election of officers, an election at any other time, unless provided for by law, is unauthorized and void. 20 O. S., 167.

When candidates for different terms are running for the office of director, the term each is to serve should be designated on the ballots and such designation cannot be disregarded by the judges of election. 20 O. S., 336.

The term of office of a director is three years; a sub-director never becomes director by virtue of his office. Com.

Sec. 3917. [Notice of election.] The director of each subdistrict shall post written or printed notices in three or more conspicuous places in his subdistrict at least six days prior to the election, designating the day and hour of opening, and the hour of closing the election.

[Designation of office to be filled.] And he shall also designate whether a director or subdirector shall be elected.

[Election, where held.] The election shall be held at the usual place of holding school meetings in the subdistrict.

[Judges; oath.] The meeting shall be organized by appointing a chairman and secretary, who shall act as judges of the election under oath or affirmation, which oath or affirmation may be administered by the director of the subdistrict, or any other person competent to administer such an oath or affirmation, and the secretary shall keep a poll-book and tally-sheet, which shall be signed by the judges, and delivered

Ch. 4.

Township and Special Districts.

within five days to the clerk of the township. (93 v. 45; 89 v. 93; 77 v. 63; Rev. Stat. 1880; 70 v. 195, § 28; 75 v. 81, § 27.)

When judges and clerks of election fail to sign pollbooks and tallysheets, to fill up blanks in the caption, or to carry out the aggregate votes, such omissions and mistakes may be corrected upon the trial of a contest, by parol evidence, and when so corrected, the documents, sustained by the parol proof, are competent evidence of the result of the election. 16 O. S., 184.

The evident intent of the law requires that when the polls are once opened, they should be kept open until the hour prescribed for finally closing; but the statute on the conduct of elections, section 2929, is said to be directory, and if so, "a departure from its strict observance will not necessarily invalidate an election, where no fraud has been practiced and no substantial right violated." 19 O. S., 25.

The officers of an election board cannot, after dissolving the board and dispersing, return and perform any official act regarding such election. When they have dispersed, they cease to be officers of the election—are *functi officio*. 21 O. S., 216; 14 O. S., 315.

Pollbooks duly certified and returned are *prima facie* evidence of the truth of their contents, but this presumption will be rebutted by proof that they are fraudulent and fictitious to such an extent as to render them wholly unreliable. 26 O. S., 549.

Quo warranto will lie where no provision for a contest is made by law—as was the case in the election of school directors against the respondent, whom the board recognized, and the fact that the relator has received a certificate is not conclusive. 8 Rec., 432; 4 B., 1065.

A person voted for under the name of E. H. Smith, whose name is H. E. Smith, there being no such man as E. H. Smith, should have the votes counted, if the judges are satisfied that the person H. E. Smith was intended. 11 W. L. M., 589.

In case a candidate receiving the highest number of votes at an election is ineligible, the next highest candidate is not elected. 13 Cal., 145; 38 Maine, 597; 1 Chandler, Wis., 117.

McCrary on Elections, section 184: "The safe rule probably is that where an election board are found to have willfully and deliberately committed a fraud, even though it affect a number of votes too small to change the result, it is sufficient to destroy all confidence in their official acts, and to put the party claiming anything under the election conducted by them, to the proof of his votes, by evidence, other than the returns." See *Judkins v. Hill*, 50 N. H., 140; *Knox Co. v. Davis*, 63 Ill., 405; *Russell v. State* 11 Kan., 308."

Receiving illegal or improper votes will not alone vitiate an election. It must be shown affirmatively, in order to overturn the declared result that the wrongful action changed it. *Dillon on Municipal Corporations*, 261.

Sec. 3918. [Board of subdirectors; record of proceedings.] The directors and subdirectors of each district shall constitute the board of directors, two of whom shall constitute a quorum, and at the meetings of which the director shall preside, and record their proceedings in a book that shall be provided for that purpose by the board of education, together with the minutes of the proceedings of the annual school meetings held in the subdistrict by the electors thereof, which shall be a public record; all such proceedings when so recorded shall be signed by the director; if the director be absent, either of the subdirectors may officiate in his place.

[Sessions.] The board of subdirectors shall hold regular sessions on the third Saturday of April and August, and may meet as frequently as they deem necessary for the purpose of electing teachers.

[Notice of meeting to elect teachers.] But no teacher shall be elected at a meeting of which due notice has not been given to each member of the board of subdirectors, either personally, or by written notice left at his residence or usual place of business. (93 v. 46; 90 v. 76; 89 v. 97; 70 v. 195, § 28; S. & C., 1347.)

Sec. 4017 places the final election and employment of teachers in the hands of the township board of education. Com.

Sec. 3919. [How vacancies in board filled.] Repealed, 90 v. 76.

See Sec. 3981.

Sec. 3920. [Regular and special sessions.] The board of education shall hold regular sessions on the third Monday of April, June, August, October, December and February, at the usual places of holding township elections, or at such place in the immediate vicinity thereof as may be convenient, for the transaction of business, and may adjourn from time to time, or hold special meetings at any other time or place within the township, as it deems desirable, for the transaction of business;

[How special sessions called.] Which special meeting may be called by the township clerk, by the president of the board, or by two or more members of the board, but each member of the board must be duly notified thereof personally, or by written notice left at his residence or usual place of business.

[Standing committees.] The president of each board of education at the annual meeting on the third Monday in April shall appoint at least three standing committees, to be styled respectively: (1) committee on teachers and text books; (2) committee on buildings and grounds; (3) committee on supplies; and he may appoint such other committees as may be deemed expedient.

[Duties of committees.] It shall be the duty of the committee on teachers and text books to consider the certificates of elections of teachers filed by the board of subdirectors to recommend such changes in text books or course of study, or addition to school libraries as may be desired from time to time; it shall be the duty of the committee on buildings and grounds to have an immediate oversight of all buildings, heating apparatus, furniture, school sites and repairs, and shall make reports in reference to the same from time to time to the board of education; it shall be the duty of the committee on supplies to consider all matters relating to fuel and ordinary supplies used by the schools of the township and make reports to the board of education from time to time.

[Action of committee not binding.] But no act of any standing committee shall be binding on the board of education without its approval. (93 v. 46; 89 v. 93; 86 v. 346; Rev. Stat. 1880; 70 v. 195, § 31.)

Power given to districts in Stark, Ashtabula and Portage counties to suspend schools and transfer pupils to other districts. 92 v. 697.

When the statute requires a particular kind of notice, no other notice can be substituted and satisfy the terms of the statute; a notice sent by mail does not comply with the provisions of this section. Attorney General.

Teachers can be elected at special meetings. Com.

The adjourned meetings of a regular session are regular meetings. Com.

Sec. 3921. [Map of township district.] A map of each township district shall be prepared by the board, as often as it may be necessary,

Ch. 4.

Township and Special Districts.

in which shall be designated the numbers and boundaries of the sub-districts thereof;

[Suspension of school in subdistrict; conveyance of pupils to other district; cost.] The board may at any regular session, increase or diminish the number, or change the boundaries of subdistricts, or may, when in its opinion, it will be for the best interests of the pupils in any subdistrict, suspend the school in such subdistrict, and shall provide for the conveyance of said pupils to such other district or districts as may be most convenient for them, the cost of such conveyance to be paid out of the contingent fund of said district;

[Change of subdistricts.] And any such subdistrict which may be established by act of the general assembly shall be governed by the provisions of this title, except that it cannot be changed or consolidated by the board within three years after its formation, unless the written consent of two-thirds of the electors residing in the territory affected by such change is obtained. (93 v. 85; 75 v. 120, § 32 [§ 20].)

The term "sub-district," as used in section 1 of this supplementary act of April 9, 1867 (64 v. 117), does not include the subordinate territorial divisions of separate school districts into which a city or village may be subdivided, but applies exclusively to township or county sub-districts. 19 O. S., 577.

Under this section the schools of a township can be centralized without submitting the question to the electors of the district. Com.

(3921-1) Sec. 1. [Centralization defined.] For the purposes of this act the word "centralization" is hereby defined as a system of schools in a township providing for the abolishment of all subdistricts and the conveyance of pupils to one or more central schools. (94 v. 317.)

(3921-2) Sec. 2. [Submission of question of centralization to vote, compulsory on petition.] A township board of education may submit the question of centralization, and upon the petition of not less than one-fourth of the qualified electors of such township district, must submit such question to a vote of the qualified electors of such township district, and if more votes are cast in favor of centralization than against it, at such election, it shall then become the duty of the board of education, and such board of education is required to proceed at once to the centralization of schools of the township and if necessary, purchase a site or sites and erect a suitable building or buildings thereon; provided, that if, at the said election, more votes are cast against the proposition for centralization than for it, the question shall not again be submitted to the electors of said township district for a period of two years. (94 v. 317.)

(3921-3) Sec. 3. [Conduct of elections.] All elections ordered by a board of education in pursuance of section two of this act shall be held at the usual place or places of holding township elections, at a regular or special election, as may be determined by the board and notice shall be

given and the election conducted in all respects as provided by law for the election of township officers, and the ballots shall have printed thereon: "For centralization — Yes." "For centralization — No." (94 v. 317.)

Women cannot vote at such elections. Com.

(3921-4) **Sec. 4. [Issue of bonds to be submitted to vote.]** Should the board of education deem it necessary to issue bonds to purchase a site or sites or erect a building or buildings for the purposes of such centralization, then the election shall be conducted as provided in section three of this act, but in such case the ballots shall have printed thereon: "For levying a tax to purchase — site (or sites) and erect — building (or buildings) for the centralization of schools at a cost not to exceed \$——, yes." "For levying a tax to purchase — site (or sites) and erect — building (or buildings) for the centralization of schools at a cost not to exceed \$——, no," and if more votes are cast in favor of levying said tax for said purpose than against said proposition, at such election, it shall be the duty of the said board of education, and the board of education is authorized to issue bonds and sell the same as provided by law and to levy a special tax to provide for the payment of the same together with interest thereon; provided, said levy shall not in any one year exceed five mills on the dollar valuation and said bonds shall not bear more than six per cent. interest and shall not be sold at less than their face value. (94 v. 317.)

Women cannot vote at such elections. Com.

(3921-5) **Sec. 5. [Reorganization of board of education in centralized townships.]** In a township district in which proceedings have been had under the preceding sections of this act and the vote has been favorable for centralization, there shall be an election held on the next succeeding first Monday of April for the election of a board of education consisting of five members elected at large in said township district; one of whom shall serve for three years, two for two years and two for one year; and two members shall be elected annually thereafter for a term of three years, except, every third year but one shall be elected for three years. Said election shall be held at the annual voting place or places in said township, by the regular election officers and shall be conducted in all respects as provided by law for the election of township officers; provided, there shall be a separate ballot box, poll books and tally sheets, and said election officers shall receive no extra compensation for such services. (94 v. 317.)

(3921-6) **Sec. 6. [Prior existing board abolished; its successor.]** Upon the election, qualification and organization of the board of education provided for in section five of this act, the board of education previously existing in said township district shall cease to exist and the same is hereby abolished and the board of education provided for in

Ch. 4.

Township and Special Districts.

this act shall be considered the successor of the former township board. (94 v. 317.)

(3921-7) **Sec. 7. [Township clerk and treasurer ex-officio members of board; laws governing board.]** The clerk of the township shall be ex-officio member of the board of education, provided for by this act and shall be clerk thereof; the treasurer of the township shall be ex-officio treasurer of the board of education; provided, that in all other respects the laws governing village boards of education shall govern and control all boards of education organized as provided by this act. (94 v. 317.)

(3921-8) **Sec. 8. [Graded course of instruction required; high school; transportation of pupils.]** Boards of education in township districts organized as provided for by this act are required to maintain and support a graded course of instruction, and may include a high school course of not less than two years; they are also required to furnish transportation to and from school, to all pupils living more than three-fourths of a mile from the central building, said distance to be measured from the enclosure immediately surrounding their residence to the school-house property, along the nearest public highway. (94 v. 317.)

Sec. 3922. [Election in new subdistrict.] When the board consolidates two or more subdistricts into a new subdistrict, or establishes a new subdistrict in any other way, it shall call a special meeting of the qualified electors resident in the new subdistrict for the purpose of electing one director and two subdirectors for the same;

[Notices.] At least five days before the time fixed for the meeting, the board shall post, in three of the most public places in the new subdistrict, written or printed notices stating time, place and object of holding the meeting;

[Election; how conducted; term of director.] The election shall be conducted as provided in this chapter, and a director shall be elected to serve the term which will render the classes of directors most equal, from the annual meeting on the third Monday of April next preceding the organization of the new subdistrict;

[Terms of subdirectors determined by lot; terms of directors and subdirectors of consolidated districts terminate.] And the terms of the two subdirectors shall be determined by lot; and the terms of office of the directors and subdirectors of subdistricts so consolidated, shall expire at the time such new district is created. (93 v. 47; 89 v. 94; 75 v. 120, § 32 (§ 20).)

* Graduating examination of pupils from sub-districts and special districts; Sec. 4020-1.

For conduct of elections, see notes under Secs. 3909, 3916 and 3917, ante.

The attaching of the territory composing a sub-district to adjacent sub-districts by a township board of education, under section 32 of the act of May 1, 1873, is not a consolida-

tion of two or more sub-districts into a new sub-district, and the offices of local directors in the sub-districts to which such territory is attached are not thereby vacated. 25 O. S., 250.

SPECIAL DISTRICTS.

What constitutes a special district; Sec. 3891.

Creation and change of special districts; 3946.

Sec. 3923. [Board of special district; how constituted, and how increased.] The board of education of each special district shall consist of three members, who shall be residents of the district, and have the qualifications of an elector therein; and when the electors of a special district, the board of education of which consists of three members, desire that the board shall consist of six members, they may make such change in the same manner as provided for city districts of the second class and village districts, in section thirty-nine hundred and eleven. (70 v. 195, § 32 (70 v. 200, § 22).)

For "an act providing for the number of members constituting boards of education in special districts in Hamilton county"; Sec. 3904-1.

Sec. 3924. [Election of members.] There shall be elected annually, by ballot, on the second Monday of April, in each special district, by the qualified electors thereof, at the usual time and place of holding school elections in such district, one judicious and competent person to serve as member of the board for three years from the first Monday succeeding his election, and until the election and qualification of his successor; but in special districts hereafter established, the first election for members of the board shall be held within twenty days after such establishment, at least five days' previous notice of which, stating the time and place of meeting, and signed by at least three electors of the district, shall be posted in three of the most conspicuous places in the district; at such meeting a chairman and clerk shall be chosen, and there shall be elected three members of the board one to serve until the third Monday of April next succeeding his election, and one to serve for one year and one for two years from said third Monday, and each to serve until the election and qualification of his successor. (71 v. 57, § 23; 75 v. 120, § 19.)

§ 19.)

Election of school board members in villages in Hamilton county shall be on the first Monday of April, between six a. m. and four p. m. 90 L. L., 262.

Australian ballot law does not apply; Sec. 2966-13.

For conduct of election, see notes under Secs. 3909, 3916 and 3917, ante.

As to serving until successor is elected. 7 C. C., 1, 4; aff'd 29 B., 390.

Sec. 3925. [Notice and conduct of election.] The clerk of the district shall post written or printed notices, in three or more conspicuous places in the district, at least six days prior to the day of election, designating the day and the hour of opening and closing the election; and the election shall proceed, and a return thereof be made, in the manner provided for elections in village districts, and shall continue at least two hours. (71 v. 57, § 24.)

Notices of election; see notes under Sec. 3909.

Sec. 3926. [How special or village district abandoned.] When the electors of a special or village district desire to abandon their organization, and become a part of the township district of the township in which such special or village district is located, they shall make the change in the following manner: Written or printed notices shall be posted in at least five of the most public places in the district, signed by a majority of the members of the board of education, or one of the board, and at least six resident electors of the district, requesting the qualified electors thereof to assemble on a day, and at an hour and place, designated in the notices, which notices shall be posted at least ten days prior to the day designated in them, then and there to vote for or against such change; the electors, when assembled at the time and place designated in the notices, shall appoint a chairman and two clerks, who shall be judges of the election, which shall continue at least two hours; those in favor of the proposed change shall have written or printed on their ballots the words, "School—change," and those opposed thereto the words, "School—no change;" and a majority of the ballots cast shall determine the question whether the change be made; the judges shall within five days after the election make due return thereof to the board of education of the district; and if a majority of the votes cast are in favor of the change, the board shall immediately certify that fact to the township board, which shall thereupon assume jurisdiction of the territory, property, and affairs of the special district, and thereafter treat such district as a subdistrict of the township district.

[Withdrawal of subdistricts from special districts.] Provided, however, that in a special district, which has been created from two or more joint subdistricts, subdistricts or parts of subdistricts if the electors of the territory which formerly composed any one or more of such joint subdistricts, subdistricts or parts of subdistricts desire to withdraw from the special district organization and become a part of the township in which they are situated, the change may be made by a majority vote of the electors of the special district except that posted notices signed by six resident electors shall be sufficient to call such election. (93 v. 74; 88 v. 297; 72 v. 27, § 25; 94 v. 233.)

Conduct of elections; see notes under Secs. 3909, 1916 and 3917, ante.

Sec. 3927. [Election when special district abandoned.] When a special district is abandoned, there shall be an election of director and two subdirectors, as provided in this chapter, and for the terms directed in section 3922.

[Property in custody of clerk; notice to county auditor.] The clerk of the special or village district board shall deliver to the clerk of the township board, all the books and papers of the special district

in his custody, and notify the county auditor, in writing, of the abandonment of the organization of the district;

[**Property in custody of treasurer.**] The treasurer of the special or village district board shall deliver to the treasurer of the township board all the books, papers and money of the special or village district in his possession;

[**Unfinished business; debts.**] The township board shall complete all unfinished business pertaining to the special or village district; any debt contracted by the special or village district board shall be paid out of the money transferred to the treasurer of the township board, as herein provided, and out of the money arising from the taxes levied by the special or village district board;

[**Special tax.**] And if such funds are insufficient therefor, the remainder shall be paid by a special tax upon the property of the subdistrict so created. (93 v. 47; 89 v. 94; 88 v. 297; 72 v. 27, § 25.)

CHAPTER 5.

JOINT SUBDISTRICTS.

SECTION.

3928. Township boards may establish by mutual agreement; school building; organization of meeting; copies of memorandum of proceedings to be transmitted by secretary.
3929. How the school governed and supported.
3930. Further provisions for establishment.
3931. May be established on petition.
3932. What petition to contain.
3933. Clerks to give notice of filing, etc.
3934. When petition for joint sub-district may be filed with probate judge.
3935. Security for costs to be given.
3936. Time and place of meeting of commissioners.
3937. Publication of notice.
3938. Commissioners to be appointed.
3939. Oath and duties of commissioners.

SECTION.

3940. Clerks to have present plats and papers.
3941. The report of the commissioners.
- 3941a. Local directors to designate site for school house; board of education to make estimate; proceedings if board fail.
3942. The effect of the report.
3943. Judgment for costs; what fees allowed.
3944. Report and judgment for sub-district.
3945. How cost paid in such case.
3946. Petition for such purposes.
- 3946a. Division of township school fund when a special or village district is created.
3947. Proceedings thereon.
3948. When such petition may be filed with probate judge.
3949. Repealed.
3950. Joint sub-districts; how dissolved.

If a special law creating a joint sub-school district makes no provision for the election of directors it will not fail, but an election can be held under any general law applicable. 7 C. C., 152.

Sec. 3928. [Township boards may establish by mutual agreement.] When the better accommodation of scholars makes it desirable to form a joint subdistrict, or joint township high school district composed of parts, or all, of two or more townships, the board of education of the townships interested, may, by mutual agreement, at a joint meeting held for the purpose, establish the same, and fix the boundaries thereof;

[School building.] If there is no suitable school-house within such boundaries, or if there is one, but it is not suitably located, the board shall designate a site whereon to erect such building; but if there is a suitable school-house within such boundaries, properly located, the school shall be held therein;

[Organization of meeting.] A chairman and secretary shall be chosen at such meeting, and the secretary shall make a memorandum of the proceedings had thereat.

[Copies of memorandum of proceedings to be transmitted by secretary.] A copy of such memorandum, signed by the chairman and secretary, shall be transmitted to the clerk of each of the boards, who shall record the same in his record of proceedings of the board; and the secretary shall transmit a like copy of the proceedings to the auditor of each county having territory embraced in the joint sub-district, or township, or joint township high school district. (93 v. 283; 70 v. 195, § 34; S. & S. 713.)



A majority of the trustees of each township and not a majority of all is meant by the act allowing the "majority of trustees in two or more townships" to lay off a school district embracing parts of different townships. 17 O., 32.

Sections 3928-3948 cited in 10 C. C., 490.

See opinion of attorney general under Sec. 3934.

A teacher's certificate issued by the board of examiners of any county having territory in a joint sub-district is valid in such district; see Sec. 4073.

A special act abolishing a joint sub-district is valid. 35 B., 360.

So is a special act creating one. 7 C. C., 152.

Sec. 3929. [Control of school in joint subdistricts or joint township high school districts.] The school in a joint subdistrict, or joint township high school district, shall be under the control of the board of education in the township in which the school house is situate, of which board the director of the joint subdistrict, or joint township high school district, shall be a member, or members;

[Support the same.] But such school shall be supported from the school funds of the townships having territory in the joint subdistrict, or joint township high school district, in proportion to the enumeration of youth, as provided in sections thirty-nine hundred and sixty-one and thirty-nine hundred and sixty-two and thirty-nine hundred and sixty-three, as amended by this act. (93 v. 283; 89 v. 94; 75 v. 84, § 35; S. & S. 713.)

Rebuilding or changing location of school house in joint sub-district; Sec. 3939.

"Shall be a member," let him live in which township or county he may. Com.

Sec. 3930. [Further provisions for establishment.] Joint subdistricts may be established also in the manner provided in succeeding sections of this chapter.

When a joint sub-school district is established by the probate court, under the provisions of sections 3930 and 3950, inclusive, of the Revised Statutes, and the judgment of said court remains in full force and unreversed, an action by the board of education of the township in which such joint sub-district is established, to enjoin the county commissioners from levying a tax to support the same, cannot be maintained. The judgment of the probate court is final, unless reversed for error or set aside for fraud. 39 O. S., 259.

Sec. 3931. [May be established on petition.] Three or more qualified electors, resident of the territory sought to be included therein, may apply, in writing, to the board of education of any township wherein any part of the territory is situate, for the creation thereof. (75 v. 120, § 1.)

Sec. 3932. [What petition to contain.] The petition shall describe the territory sought to be included in the joint subdistrict, may set forth the reasons requiring the creation thereof, and shall be filed with the clerk of the board of education to which it is addressed. (75 v. 120, § 2.)

Sec. 3933. [Clerks to give notice of filing, etc.] Upon the filing of such petition, such clerk shall forthwith give notice thereof, in writing, to the members of the board of which he is a clerk, which notice shall name a suitable and convenient place, and a day and hour, for the boards

to meet; he shall also transmit a like notice, forthwith, to the clerks of all other boards of education having jurisdiction over any of the territory sought to be affected; and such clerks, upon the receipt of such notice, shall in like manner give notice forthwith of the filing of such petition, and of the time and place of meeting, to each member of their respective boards. (75 v. 120, § 3.)

Sec. 3934. [When petition for joint subdistrict may be filed with probate judge.] It shall be the duty of such boards to meet and consider the petition within thirty days from the time the same is filed, but if they do not do so within sixty days from such time, or having met, established, or determined not to establish a joint subdistrict, three or more electors of the territory sought to be included therein may file a petition of remonstrance, for or against the same, with the probate judge of the county; and if the territory sought to be included therein is situated in two or more counties, the petition may be filed with the probate judge of either county. (1881, Jan. 14: 78 v. 8; Rev. Stat. 1880; 75 v. 120, § 4.)

Whether a petition must show that prior steps were had under Sec. 3893, see 10 C. C., 480, 486.

Where a joint meeting of two or more boards of education is provided for by law, it requires a majority of each board to determine a question, unless otherwise provided by law. Attorney General.

Sec. 3935. [Security for costs to be given.] The petitioners shall also file with the probate judge the undertaking of one or more of their number, with security to the satisfaction of the judge, in the sum of one hundred dollars, conditioned that the petitioners will pay all the cost of the proceeding if a joint subdistrict be not established thereby. (75 v. 120, § 5.)

Sec. 3936. [Time and place of meeting of commissioners.] Upon the filing of such petition and undertaking, the judge shall fix a time, not more than sixty days thereafter, and the place, which shall be the school house upon the territory, if there is one thereon, and if there is more than one school house thereon, then the house last built, and if there is no school house thereon, then some convenient place within the territory, for the meeting of the commissioners hereinafter directed to be appointed. (75 v. 120, § 6.)

Sec. 3937. [Publication of notice.] The judge shall thereupon cause to be published for four consecutive weeks, in two newspapers of opposite politics, printed and of general circulation in the county where the petition is filed, notice of the filing of such petition, and of the time and place of meeting of the commissioners. (75 v. 120, § 7.)

Sec. 3938. [Commissioners to be appointed.] The judge shall also make an order appointing three judicious, disinterested men of the county, and not residents of either of the townships to be affected, to be

commissioners, and to act in the premises; if a person so appointed die, or fail from any cause to be present and to act, or if he give notice of his inability to serve, the judge shall forthwith, by order, appoint another in his stead, who may act as if he had been originally appointed; and the judge shall deliver a copy of the petition and his order to the commissioners, and shall instruct them in the law applicable to such proceedings. (75 v. 120, § 8.)

Sec. 3939. [Oath and duties of commissioners.] The commissioners shall take an oath to discharge faithfully the duties required by this chapter according to the best of their knowledge and understanding, and shall meet at the time and place named in the published notice, may examine witnesses under oath, which may be administered by one of their own number, and consider and determine the question whether a joint subdistrict ought to be established. (75 v. 120, § 9.)

Sec. 3940. [Clerks to have present plats and papers.] The clerks of the several boards of education interested shall be present at the meeting of the commissioners, and have with them the plats of the several townships, with the lines of the several subdistricts marked thereon, and such other papers and documents as will serve to inform the commissioners and give them a correct idea of the wants of the petitioners. (75 v. 120 § 10.)

Sec. 3941. [The report of the commissioners.] The commissioners shall report in writing to the probate judge —

1. Whether or not a joint subdistrict ought to be established, and their reasons therefor.

2. If they find in favor of the establishment of a joint subdistrict, they shall give the lines and a plat thereof; they may also change the lines of the subdistrict proposed in the position [petition], by including therein other territory, or excluding territory included therein, or both; and if there is no suitable school house within such boundaries, or, if there is one, but it is not suitably located, they shall designate a site whereon to erect such building, provided, that if said commissioners shall have located, or shall hereafter locate a site upon a township, or county line and embracing territory in different townships then the school building shall be erected on said site, but in that township having the largest number of children of school age who live in said joint subdistrict. (90 v. 115; 75 v. 120, § 11.)

The board of education cannot abandon site selected by the commissioners and purchase another site. 58 O. S., 354.

Sec. 3941a. [Estimate for site and school-house; report to county auditor; making of levy and collection of money.] When in a joint subdistrict established by proceedings in the probate court, a site has been designated for a school house, the board of education of the town-

Ch. 5.

Joint Subdistricts.

ship in which such site is designated shall make the necessary estimate to purchase such school house site; and erect and furnish a suitable school house thereon; and said board shall report such estimate and levy to the county auditor; said levy shall be made and the money collected in like manner as the funds are levied and collected for other joint subdistricts. . (89 v. 94; 80 v. 62.)

For rebuilding school house or changing site in joint sub-districts, see Sec. 3939.

Sec. 3942. [The effect of the report.] The report of the commissioners, if against the establishment of a joint subdistrict, shall be a bar to any proceeding to establish a joint subdistrict out of any of the territory described in the petition for three years; and if the report be in favor of the establishment of a joint subdistrict, it shall be final, unless set aside by the probate court for fraud. (75 v. 120, § 12.)

See note under Sec. 3930.

Sec. 3943. [Judgment for costs; what fees allowed.] If the report be against the establishment of a joint subdistrict the judge shall render judgment against the petitioners for all the costs of the proceeding; and the commissioners and the judge shall receive the same fees as are authorized to be charged for like services in proceedings to establish roads, and such other fees as are authorized by law. (75 v. 120, § 13.)

Sec. 3944. [Report and judgment for subdistrict.] If the report be in favor of the establishment of a joint subdistrict, the judge shall make an entry confirming the same; and a certified copy of the report, including the plat and his order, shall be delivered to the clerk of the board of education of each township interested therein, and thereafter such joint subdistrict shall be fully established, and shall be governed and controlled in the same manner as joint subdistricts otherwise established. (75 v. 120, § 14.)

See 39 O. S., 151, 152, under Sec. 3950.

Sec. 3945. [How costs paid in such case.] In such case the judge shall tax the costs of the proceedings to the board of education of the several townships interested, in such proportion as he may deem just and equitable, and certify the same to the clerks of such boards; and the boards shall be liable therefor, and at the first regular or special meeting of each thereafter payment of the amount so taxed to it shall be ordered. (75 v. 120 § 15.)

Sec. 3946. [Petition for such purposes.] A petition may, in like manner, be filed with the clerk of the board of education of any township, praying for the creation of an additional subdistrict, or for changing the lines of subdistricts, or for the creation of a special school district, or for changing the lines of special or village districts, and adjoining

ing subdistricts; but when a special or village district is interested in such proposed change, the petition may be filed either with the clerk of the township board, or the clerk of the board of education of such special or village district; and when any such lines have been so changed they shall not be altered by any board or boards of education until after the expiration of three years, except upon the written consent of two-thirds of the electors residing within the territory affected by the change. (75 v. 120, § 16.)

Change of territory organizing a separate school district does not entitle the new district to seize on property within it that had been set apart by the township board for a higher school than a primary, although this would be within the letter of R. S., Sec. 3972, which relates to the subject. 46 O. S., 595.

A proceeding under R. S., Sec. 3946, to create a special school district will not lie if it includes a part or even all of a joint sub-district, for it would conflict with Sec. 3950. 6 C. C., 599; Aff'd no Rep.

Four petitions for four special districts cannot all be granted by one vote after the board's refusal to vote separately on each. 5 C. C., 303; 5 O. D., 400.

For proceedings hereunder, under this and next two sections, see 10 C. C., 480.

The petition is not applicable to a case in which it is sought to change the boundaries between two special or two village or city districts, or between a special and a village or city district. It pertains only to cases in which the boundaries of a sub-district are in some way to be affected, as only in such cases has the township board jurisdiction. But, according to section 3893, the boards of education having the management of such special, village, or city districts may transfer their territory from one to the other. *Ham. Co. Com. Pleas, Boards of Ed'n Sycamore Tp. v. Henry C. Bowen et al.*

Sec. 3946a. [Division of township school funds when a special or village district is created.] When a special or village school district is created the treasurer of the township district shall pay to the treasurer of such newly created district such relative portion of surplus money in the treasury of the township district as the valuation of the created district bears to the valuation of the township, and also a like relative portion of the levy, or levies, existing at the time such district is created as said levy or levies come into his hands. (94 v. 64.)

Sec. 3947. [Proceedings on petition.] Such petition may be filed with the clerk of the board of education of such special or village district, with the clerk of the board of education of the township, or, if the change sought by the petition affect territory in more than one township, with the clerk of the board of education of either township; and, upon the filing thereof, the members of the board or boards interested shall be notified, as provided in section *thirty-nine hundred and thirty-three*. (75 v. 120, § 17.)

Sec. 3948. [When such petition may be filed with probate judge.] It shall be the duty of such board or boards to meet and consider the petition within thirty days from the time the same is filed but on failure to do so within sixty days of such time, or if the board or boards meet and grant, or refuse to grant, the prayer of the petition, a petition or remonstrance may be filed with the probate judge of the county, by either party, as provided in section *thirty-nine hundred and thirty-four*; and, thereafter, such proceedings may be had thereon, and they shall

Ch. 5.

Joint Subdistricts.

have the same effect as is herein provided for the formation of joint subdistricts. (1881, Jan. 14: 78 v. 8, 9; Rev. Stat. 1880; 75 v 120, § 18.)

See opinion of attorney general under Sec. 3934.

Sec. 3949. [Election, duties, etc., of directors.] Repealed, 90 v. 76.)

Sec. 3950. [Dissolution or alteration; establishment of special districts.] No joint subdistrict, which is now organized or may hereafter be organized, shall be dissolved, changed or altered, unless by the concurrent action of the boards of education of the several townships having territory included therein; provided, however, that when any board of education, in a joint subdistrict desires to dissolve, change or alter the same, the board of education desiring such dissolution, change or alteration, shall notify, in writing, the boards of education interested of the time when they will meet to consider the proposed dissolution, change or alteration. The place of meeting shall be the school house in such joint subdistrict; but if there be none, then at some convenient place in the vicinity of such joint subdistrict. If the joint board fails to meet, or having met cannot agree upon a dissolution, change or alteration, as the case may be, then the board of education desiring such dissolution, change or alteration may appeal to the probate court of the proper county, and the same proceedings shall be had as in case of appeals in the formation of joint subdistricts, so far as applicable, as provided in sections 3935 to 3941, inclusive; and any joint subdistricts established by proceedings in the probate court may be dissolved, changed or altered, as provided in this section, at any time after the expiration of five years, or the court may dissolve the same at any time, upon being petitioned to do so by two-thirds of the voters residing in the district which is affected by the change, when the best interests of the school demand such dissolution, change or alteration. And provided further, that the provisions of this section shall in no wise interfere with the establishment of any special district under the provisions of sections three thousand nine hundred and twenty-eight to three thousand nine hundred and forty-nine, inclusive, as amended March fifteen, one thousand eight hundred and ninety-two. (91 v. 114; 86 v 211; 84 v. 117; 81 v. 211; 77 v. 186; Rev. Stat. 1880; 72 v. 63, § 36.)

In proceedings had in 1880, under section 3950 of the Revised Statutes, as amended April 12, 1880, to dissolve a joint sub-school district, a commission was regularly appointed, and afterward such commission reported to the probate court in favor of such dissolution; Held, the probate court had the same power to confirm the report that it had under section 3944, Revised Statutes, to confirm the report of a commission establishing such sub-district. 39 O. S., 151, 152.

See 39 O. S., 259, under Sec. 3930.

See 6 C. C., 599, under Sec. 3946.

CHAPTER 6. SCHOOL FUNDS.

SECTION.

- 3951. The "state common school fund."
- 3951a. Ohio and Miami university fund, admission of pupils.
- 3951b. Distribution of fund.
- 3952. Interest upon proceeds of salt and swamp lands.
- 3953. The "common school fund."
- 3954. Accounts of common school fund; how kept, etc.
- 3955. Bequests, etc., in trust for common school fund.
- 3956. Apportionment of school funds by auditor of state.
- 3957. To what county common school fund paid when county line divides original surveyed township.
- 3958. Board of education to make estimate for expenses.
- 3958a. Public kindergarten.
- 3959. Maximum of levy.
- 3960. Estimate to be certified to county auditor.
- 3961. Contingent fund of joint sub-school district.
- 3961a. Action against board having control of school in joint sub-district.
- 3962. Same when county line divides such subdistrict.
- 3963. Funds of district composed of territory in more than one county.

SECTION.

- 3964. Apportionment of school fund by county auditor.
- 3965. Distribution of money after apportionment.
- 3966. Apportionment of common school fund by county auditor when county line divides original surveyed township.
- 3967. Apportionment of school contingent fund.
- 3968. How contingent fund to be applied in Toledo.
- 3969. County commissioners to levy contingent fund when board neglects.
- 3970. County auditor to collect fines, etc., and inspect section sixteen accounts.
- 3970-1. Tax in Cleveland for school bonds and the interest.
- 3970-2. Sinking fund proceeds; commissioners; bond; removal; vacancies.
- 3970-3. Annual appropriation to sinking fund.
- 3970-4. Re-imbursement of any loss.
- 3970-5. Repeals.
- 3970-6. Sinking funds in city districts of first class.
- 3970-7. Investment.
- 3970-8. Use of interest; minimum uninvested.
- 3970-9. Deposit and how drawn.

Sec. 3951. ["The state common school fund" and "The Ohio State University fund."] For the purpose of affording the advantages of a free education to all the youth of the state, there shall be levied annually a tax on the grand list of the taxable property of the state, which shall be collected in the same manner as other state taxes and the proceeds of which shall constitute "the state common school fund;" and for the purpose of higher, agricultural and industrial education, including manual training, there shall be levied and collected in the same manner, a tax on the grand list of taxable property of the state, which shall constitute "the Ohio State University fund." The rate of such levy in each case shall be designated by the general assembly at least once in two years; and if the general assembly shall fail to designate the rate for any year, the same shall be for "the state common school fund," one mill; and for the "Ohio State University fund," fifteen one-hundredths of one mill, for the years 1900 and 1901, and thereafter one-tenth of one mill upon each dollar of valuation of such taxable property; provided, that the five one-hundredths of a mill increase of levy for the "Ohio State University fund" herein provided shall be used solely for the erection and equipment of

buildings for said university. (94 v. 81; 92 v. 59; 88 v. 159; 70 v. 195, § 126.)

For "an act prescribing rate of state taxes," see Sec. 2820-1 R. S.
See also Secs. 236, 2820, 2821 R. S.

Sec. 3951a. [Ohio and Miami university fund; admission of pupils.] For the purpose of affording adequate support to the Ohio university and to the Miami university, there shall be levied annually a tax on the grand list of the taxable property of the state of Ohio, which shall be collected in the same manner as other state taxes and the proceeds of which shall constitute the "Ohio and Miami university fund." The rate of such levy shall be designated by the general assembly at least once in two years, and if the general assembly shall fail to designate the rate for any year, the same shall be for the said "the Ohio and Miami university fund" three one-hundredths (.03) of one mill upon each dollar of valuation of such taxable property. Said Ohio university and Miami university shall admit free of tuition all residents of this state who shall conform to the standards of admission. (92 v. 41.)

Sec. 3951b. [Distribution of fund.] The said "Ohio and Miami university fund" shall be distributed and paid annually, seven-twelfths (7-12) thereof to the treasurer of the Ohio university upon the order of the president of the board of trustees of said Ohio university, and five-twelfths (5-12) thereof to the treasurer of the Miami university upon the order of the president of the board of trustees of the said Miami university. (92 v. 41.)

Sec. 3952. [Interest upon proceeds of salt and swamp lands.] The state shall pay interest annually, at the rate of six per cent per annum, upon all money which has been paid into the state treasury on account of sales of lands commonly called "salt lands," and upon all money heretofore paid, or which may hereafter be paid into the state treasury on account of sales of swamp lands granted to the state of Ohio by act of congress; the money received from such sales shall constitute an irreducible debt of the state; and the interest shall be apportioned annually on the same basis as the state common school fund is apportioned, and distributed to the several counties as provided in section *thirty-nine hundred and fifty-six*. (70 v. 195, § 132; 49 v. 40, § 1; S. & C. 1338.)

As to proceeds of swamp lands under the act of 1894, see Sec. 3107-120.

As to swamp lands in Paulding county, see 89 v. 232.

Sec. 3953. [The "common school fund."] The money which has been and may hereafter be paid into the state treasury on account of sales of lands granted by congress for the support of public schools in any original surveyed township, or other district of country, shall constitute the "common school fund," of which the auditor of state shall be super-

intendent, and the income of which shall be applied exclusively to the support of common schools, in the manner designated in this chapter. (70 v. 195, §§ 127, 128; S. & C. 1335.)

Sec. 3954. [Accounts of common school fund; how kept, etc.]

The common school fund shall constitute an irreducible debt of the state, on which the state shall pay interest annually, at the rate of six per cent. per annum, to be computed for the calendar year, and the first computation on any payment of principal hereafter made to be from the time of payment to and including the thirty-first day of December next succeeding; and the auditor of state shall keep an account of the fund, and of the interest which accrues thereon, in a book or books to be provided for the purpose, with each original surveyed township and other district of country to which any part of the fund belongs, crediting each with its share of the fund, and showing the amount of interest thereon which accrues and the amount which is disbursed annually to each. (70 v. 195, §§ 128, 129; S. & C. 1335.)

Sec. 3955. [Bequests, etc., in trust for common school fund.]

When any grant or devise of land, or any donation or bequest of money or other personal property, is made to the state of Ohio, or to any person, or otherwise, in trust for the common school fund, the same shall become vested in said fund; and when the money arising therefrom is paid into the state treasury, proper accounts thereof shall be kept by the auditor of state, and the interest accruing therefrom shall be applied according to the intent of the grantor, donor, or devisor. (70 v. 195, § 131; S. & C. 1336.)

Sec. 3956. [Apportionment of school funds by auditor of state.]

The auditor of state shall apportion the state common school fund to the several counties of the state semi-annually, upon the basis of the enumeration of youth therein, as shown by the latest abstract of enumeration transmitted to him by the state commissioner of common schools; before making his February settlement with county treasurers, he shall apportion such amount thereof as he shall estimate to have been collected up to that time, and, in the settlement sheet which he transmits to the auditor of each county, shall certify the amount payable to the treasurer of his county; before making his final settlement with county treasurers each year, he shall apportion the remainder of the whole fund collected, as nearly as the same can be ascertained, and in the August settlement sheet which he transmits to the auditor of each county shall certify the amount payable to the treasurer of his county; in each February settlement sheet he shall also enter the amount of money payable to the county treasurer on the apportionment of interest specified in section *thirty-nine hundred and fifty-two*; he shall also enter in each February settlement sheet the

amount of money payable to the county treasurer on account of interest for the preceding year on the common school fund, and designate the source or sources from which the interest accrued; he shall transmit with each February settlement sheet a certified statement, showing the amount of interest derived from the common school fund payable to each original surveyed township or other district of country within the county; and the treasurer of each county shall, at each semi-annual settlement with the auditor of state, retain in the county treasury, from the state taxes collected by him, the amount of the funds herein mentioned shown by the settlement sheet of the auditor of state to be payable to him at that time; but if such amount for any county exceeds the amount of state taxes collected therein, the auditor of state shall draw an order on the treasurer of state, in favor of the treasurer of such county, for the balance of school funds due his county, and transmit the same to such county treasurer, and the treasurer of state shall pay such order upon its presentation to him. (70 v. 195, §§ 120, 130; S. & C. 1359.)

Cited 9 C. C., 13, 18; 2 O. D., 152.

Sec. 3957. [To what county common school fund paid when county line divides original surveyed township.] If parts of an original surveyed township or fractional township are situate in two or more counties, the amount of interest on common school fund due to such township shall be paid in the manner provided in the last section, to the treasurer of the county wherein the greatest relative portion of such township is situate; but if it be uncertain in which county such portion is situate, the amount of interest due to such township shall be paid to the treasurer of the oldest county in which any part of the township is situate. (70 v. 195, § 130.)

Sec. 3958. [Board of education to make estimate for expenses.] Each board of education shall, annually, at a regular or special meeting, to be held between the third Monday in April and the first Monday in June, determine by estimate, as nearly as practicable, the entire amount of money necessary to be levied as a contingent fund for the continuance of the school or schools of the district, after the state funds are exhausted, to purchase sites for school houses, to erect, purchase, lease, repair, and furnish school houses, and build additions thereto, and for other school expenses. (1884, April 14: 81 v. 177, 178; 80 v. 124, 129; 80 v. 17; Rev. Stat. 1880; 75 v. 526, § 56; 75 v. 101, § 4.)

For "an act to authorize boards of education in cities of the second grade, first class, to levy a tax for certain purposes therein specified," see Sec. 4019-18.

For "an act to authorize the board of education in cities of the first class, second grade, to make additional levy for school purposes," passed February 9, 1883 and amended March 9, 1886, see 83 v. 44.

For "an act to authorize boards of education in cities of the first grade, second class, to establish manual training schools and to provide for their equipment and maintenance," 85 v. 251, see Sec. 4019-21.

To authorize cities of the fourth grade, second class, to levy a tax for maintenance of free public and school library, see Sec. 4002-46.

School Funds.

Ch. 6.

By the change in this section made by the act of April 16, 1883 (84 v. 124), the Cincinnati school district is withdrawn from its operation. 39 O. S., 654.

See decision in 2 C. C., 475, under Sec. 3967.

"A notice, by a clerk of a board of education, of a tax voted by the board, to build a school house, delivered to the auditor on the 11th day of June, is sufficient authority to the auditor for carrying the tax into his duplicate." II Western Law Monthly, 589.

"It is a general rule that statutes, so far as they limit a time for the performance of an act by a public officer, for the public benefit, are merely directory, when *time* is not 'the essence of the thing to be done, unless there are negative words, and the act is valid if done afterwards. Com.

Tuition from non-resident pupils is to be paid to the board of education, and disbursed like other contingent funds. Neither the teacher nor the directors have any authority to retain or to pay out such funds. Com.

The term "Contingent Fund" is used to designate the local levy, because the amount of it is *contingent* on the difference between the wants of the district and the amount of state funds received. It includes both the amount levied for the payment of teachers, and that for building, repairs and other expenses. The language of this section and that of section 3967 seems to imply that the state funds are to be used only for the payment of teachers. Com.

Sec. 3958a. [Public kindergarten.] Each board of education of any city, special or village school district may, if they so choose, at any regular or special meeting, establish public kindergarten schools in connection with the public schools of said city, special or village school district, for the children of said city, special or village school district, between the ages of four and six years; and may, at the meeting provided for in section 3958, determine what part of the contingent fund provided for in sections 3958 and 3959 shall be set aside for such purpose; provided, no part of the state fund shall be appropriated therefor; but said boards of education may provide an additional sum for said kindergarten instruction by the levy of a tax not exceeding one mill, in addition to the levy provided for in section 3959, as amended March 24, 1892. (90 v. 349.)

Sec. 3959. [Maximum tax levy in all school districts; exceptions.] Such estimate and levy shall not exceed, in cities of the first grade of the first class, three and one-fourth mills, provided, however, that the boards of education in said cities may levy one mill additional for every five thousand pupils over and above twenty-five thousand enrolled in the public schools of said cities, which levy, however, shall in no case exceed four and one-tenth mills; and in the cities of the second grade of the first class such estimate and levy shall not exceed seven mills on the dollar of valuation of taxable property; provided, however, that boards of education in cities of the second grade of the first class may levy, in addition to the seven mills aforesaid, a tax of not to exceed one mill on the dollar of valuation of taxable [property] within said district which said levy shall be used for the purchase of school house sites and the erection of school buildings thereon and for no other purpose whatever, and for the purpose of paying for such sites or for the construction of such buildings such boards of education may issue certificates of indebtedness in anticipation of such levy, payable at such times not exceeding one year from date of issue as they may designate, but bearing no interest before maturity. And in all [other] districts, except those hereinafter

named, such estimate and levy shall not exceed seven mills on each dollar of valuation of taxable property; provided, however, that in counties containing a city of the first grade of the first class, in districts outside such city in which a high school is maintained, and in all special and village districts of any county in the state, such estimate and levy shall not exceed ten mills on each dollar of valuation of taxable property; but a greater tax than is authorized above, except in city districts of the first class, may be levied for either of the purposes specified in section 3958 if the proposition to make such levy shall have been first submitted by the board of education to a vote of the electors of the school district, under a resolution prescribing the time, place and manner of voting on the same, and approved by two-thirds of those voting on the proposition, notice of which election must be given by publication of the resolution for three consecutive weeks prior thereto in some newspaper published and of general circulation in the district or by posting copies thereof in five of the most conspicuous places in the district, for a like period if no such paper is published therein. (94 v. 66; 92 v. 339; 92 v. 144; 91 v. 42; 89 v. 142; 87 v. 136, 240; 81 v. 177, 178; 80 v. 124, 129; 79 v. 80; Rev. Stat. 1880; 61 v. 63, § 2; 63 v. 15, § 1; 75 v. 101, § 4; 75 v. 526, § 56; S. & S. 775, 776.)

Note:—In will be noticed that section 3959 is given as amended March 22, 1900, and April 16, 1900; the latter amendment did not repeal the former except by implication, they are therefore both given. Com.

See first and second reference under 3958.

For "an act to provide for the appointment of (a) tax commission in certain counties"; Sec. 2688-1, R. S.

Increase of levy for schools at Niles; see 91 v. 451.

The change in this section made by the act of April 16, 1883, withdrew from its operation the Cincinnati school district. 39 O. S., 654.

In regard to levy for township schools of higher grade than primary, see Sec. 4009-2.

Sec. 3959. [Maximum tax levy in all school districts; exceptions.]

Such estimate and levy shall not exceed, in cities of the first grade of the first class, three and one-fourth mills, provided, however, that the boards of education in said cities may levy one mill additional for every five thousand pupils over and above twenty-five thousand enrolled in the public schools of said cities, which levy, however, shall in no case exceed four and one-tenth mills; and in cities of the second grade of the first class such estimate and levy shall not exceed eight mills on the dollar of valuation of taxable property for the year 1900, nor more than seven mills on the dollar of valuation of taxable property thereafter; provided, however, that boards of education in said cities of the second grade of the first class may levy, for the year 1900, in addition to the eight mills aforesaid, and thereafter may levy in addition to the seven mills, a tax not to exceed one mill on the dollar of valuation of taxable property within said district which said levy shall be used for the purchase of school house sites and

the erection of school buildings thereon and for no other purpose whatever, and for the purpose of paying for such sites or for the construction of such buildings such boards of education may issue certificates of indebtedness in anticipation of such levy, payable at such times not exceeding one year from date of issue as they may designate, but bearing no interest before maturity. And in all other districts, except those hereinafter named, such estimate and levy shall not exceed seven mills on each dollar of valuation of taxable property; provided, however, that in counties containing a city of the first grade of the first class, in districts outside such city in which a high school is maintained, and in all special and village districts of any county in the state, such estimate and levy shall not exceed eight mills on each dollar of valuation of taxable property; but a greater tax than is authorized above, except in city districts of the first class, may be levied for either of the purposes specified in section 3958 if the proposition to make such levy shall have been first submitted by the board of education to a vote of the electors of the school district, under a resolution prescribing the time, place and manner of voting on the same, and approved by two-thirds of those voting on the proposition, notice of which election must be given by publication of the resolution for three consecutive weeks prior thereto in some newspaper published and of general circulation in the district, or by posting copies thereof in five of the most conspicuous places in the district, for a like period if no such paper is published therein. (94 v. 391.)

See note to above section.

Sec. 3960. [Estimate to be certified to county auditor.] The amount so estimated the board shall certify, in writing, on or before the first Monday in June in each year, to the auditor of the county to which the district belongs, who shall assess the entire amount upon all the taxable property of the district, and enter it upon the tax list of the county, and the county treasurer shall collect the same, at the same time and in the same manner as state and county taxes are collected, and pay it to the treasurer of the district, upon the warrant of the county auditor; and unless he is paid a fixed salary, he shall receive one per centum on all money so collected, and no more. (70 v. 195, §§ 57, 58.)

Boards of education required to certify levy for building and other purposes, to the county auditor, in addition to the levy provided for in Secs. 3959, 3960; see Sec. 3962.

Where a board of education certifies an estimate of a school tax to the county auditor, who places the same on the tax list in a reduced form, a citizen and taxpayer of the school district who, five months thereafter, seeks, by mandamus on his own relation, to compel the auditor to place the original estimate on the tax list, must satisfy the court that the board of education did not consent to the reduction. 39 O. S., 455.

By amendments to sections 3958 and 3959, Revised Statutes, passed April 16, 1883, the Cincinnati school district is withdrawn from their operation; and also, as to the duties of the board of education and county auditor. 39 O. S., 654.

See decision in 2 C. C., 475, under Sec. 3967.

County commissioners to act as board of education in case the latter neglects to perform its duty; see Sec. 3969.

See note in regard to filing certificate, under Sec. 3958.

Sec. 3961. [Contingent fund for joint subdistrict; correction of errors.] For a joint subdistrict the estimate required by section 3958 shall be made by the board of education having the control of the school thereof, and apportioned to the several townships having territory therein in proportion to enumeration of youth in the territory belonging to each. The board shall certify such estimate, so apportioned, to the county auditor, who shall add the portion for each township to the estimate for a contingent fund certified to him by its board of education, and place it on the tax list therewith for collection as part of the township estimate; when the county auditor apportions the school funds he shall transfer to the township having control of the school, from the other townships, the amount so assessed and collected, and certify to the clerk and treasurer of each township the amount due the board in control of said school, including state tax, interest on the common school fund, contingent fund, and money received from other sources, which amount shall be paid to the treasurer of the board having control of the school; and such board shall cause to be kept such accounts as will show the funds received from each township, and the disposition thereof, and transmit to the other board or boards interested, at the end of the school year, a statement of such receipts and expenditures. When it has been brought to the attention of the county auditor that any township having territory in a joint subdistrict has not, by reason of errors, mistakes, omissions or otherwise, contributed its pro rata share of the expenses establishing said district, building, repairing or furnishing school house, and other necessary building or buildings, and maintaining the school or schools in the said joint subdistrict, the auditor of the county shall, after giving ten day's notice to the clerks of the boards of education of the townships having territory in the said joint subdistrict, proceed to correct any and all mistakes, errors or omissions which have, or may hereafter occur by reason of any error, mistake or omission of the township clerk or clerks, or county auditor, respecting the certification of the appointment or distribution of the funds between the several townships having territory in the said joint subdistrict, the same as making distribution of the school funds for the current year, and in correcting any error, mistake or omission, the county auditor shall, annually thereafter, levy upon the tax duplicate of the township or townships so found indebted to other townships having territory in the said joint subdistrict, such an additional rate per cent. of levy from year to year as will be sufficient to liquidate one-third of such indebtedness so ascertained by the county auditor, each year, until the amount so found due by said county auditor has been fully liquidated. (91 v. 20; 89 v. 95; 77 v. 44; Rev. Stat. 1880; 75 v. 84, § 35.)

Sec. 3961a. [Action against board having control of school in joint subdistrict.] In case the board of education having control of

the school in any joint subdistrict shall fail or neglect to perform any of its duties as provided in section thirty-nine hundred and sixty-one; or if said board shall use or expend any part of the funds belonging to a joint subdistrict for any other purpose than for the use of the schools of such joint subdistrict; or shall fail or neglect at all times to keep the funds belonging to such joint subdistrict in the treasury, the board of education of any township having territory in such joint subdistrict may maintain an action in its own name, in any court having jurisdiction against the board of education having control of the school, to compel such board to perform its duty, or to restore to the treasury any funds which may have been unlawfully appropriated or taken therefrom; and such board in addition to costs, shall be liable for all necessary expenses incurred in the prosecution of such action in the event of judgment being rendered against it. All actions under this section shall be commenced within six years from the time the right of action accrued; but such right of action shall not be deemed to have accrued, until the discovery thereof. (91 v. 258.)

Sec. 3962. [Same when county line divides such subdistrict.] When a joint subdistrict is composed of fractions of two or more counties, such estimate shall be apportioned to the townships, as provided in the preceding section, and the amount apportioned to the township or townships belonging to each county shall be certified by the board to the auditor thereof, whose duties in the premises shall be the same as prescribed for the auditor in the preceding section, so far as the provisions thereof are applicable; and the board shall keep accounts, and report receipts and expenditures, as provided in said section. (72 v. 63, § 36.)

Sec. 3963. [Funds of district composed of territory in more than one county.] The funds belonging to a district composed of territory in more than one county shall be paid by the treasurers of the other counties to the treasurer of the county in which the school house of the district is situate; the auditors of the other counties shall make settlement on account of such funds with the auditor of the county in which such school-house is situate; and the treasurer of the district shall make the settlement required by section thirty-nine hundred and sixty-six with such auditor.

Sec. 3964. [Apportionment of school fund by county auditor.] Each county auditor shall, annually, immediately after his annual settlement with the county treasurer, apportion the school funds for his county; the state common school fund shall be apportioned in proportion to the enumeration of youth, to districts, subdistricts, and joint subdistricts, and fractions of districts and joint subdistricts within the county; but if an enumeration of youth of any district, for any year, has not been taken

and returned, such district shall not be entitled to receive any portion of said fund; the contingent funds collected from the several districts shall be paid to the districts to which they respectively belong; money received from the state on account of interest on the common school fund shall be apportioned to the school districts and parts of school districts within the territory designated by the auditor of state as entitled thereto, in proportion to the enumeration of youth therein, and all other money in the county treasury for the support of common schools, and not otherwise appropriated by law, shall be apportioned annually in the same manner as the state common school fund. (1880, March 9; 77 v. 58; Rev. Stat. 1880; 70 v. 195, § 120.)

See decision in 2 C. C., 475, under Sec. 3967.

The auditor's duty to apportion the state common school fund among the districts, according to the number of youth (Sec. 3964), is not excused by his inability to apportion other funds. His failure to apportion such fund does not authorize the township school board to treat it as a contingent fund and apportion it at discretion. Hence, the indebtedness of the township board for building school houses in an amount exceeding all the funds is no defense to a salary order of a teacher in a sub-district, entitled to one-fourth of the state common school fund, its contingent fund being exhausted. 9 C. C., 13.

Sec. 3965. [Distribution of money after apportionment.] The auditor shall immediately after such apportionment is made, enter the same in a book to be kept for that purpose, and furnish a certified copy of the apportionment to each school treasurer and clerk of his county; and he shall give to each of such treasurers an order of the county treasurer for the amount of money payable to him, and take his receipt therefor. (70 v. 195, § 120.)

Boards of education can leave school moneys in county treasury and draw the same from time to time in amounts of not less than one hundred dollars; see Sec. 1122.

County auditors shall in no case permit treasurer to have in his hands school funds amounting to more than one-half the amount of his bond; see Sec. 4048.

See decision in 2 C. C., 475, under Sec. 3967.

Sec. 3966. [Apportionment of common school fund by county auditor when county line divides original surveyed township.] When an original surveyed township or fractional township is situate in two or more counties, and the land granted thereto by congress for the support of public schools has been sold, the auditor of the county, to whose treasurer the interest on the proceeds of such sale is paid, shall apportion such interest to the counties in which such township is situate, in proportion to the youth of the township enumerated in each; such auditor shall certify to the auditor of each of the other counties the amount so ascertained to belong to the part of the township situate in his county, and transmit to the treasurer of each of such counties an order on the treasurer of his own county for such amount; and the auditor of each county shall apportion the amount of such interest belonging to the part of the township in his county, to the districts or parts of districts entitled thereto, in proportion to the enumeration of youth therein, and certify and pay

the same to the proper school officers, as provided in the preceding section. (70 v. 195, §§ 121, 122; 72 v. 63, § 36.)

Sec. 3967. [Apportionment of school contingent fund.] So much of the contingent fund as may be set apart by a township board for the continuance of schools after the state funds are exhausted, shall be so apportioned by the board that the schools in all the subdistricts of the township shall be continued the same length of time each year; and if the apportionment be not satisfactory to the directors of any subdistrict, or a majority of them, they may give notice thereof, in writing, to the county commissioners, who, at their first regular meeting for the transaction of business, after the receipt of such notice, shall revise the apportionment, and the amount aforesaid shall be apportioned in the manner determined by the commissioners; but neither the township board nor the commissioners shall reapportion any funds which were apportioned among the subdistricts before any preceding annual settlement, and in making an apportionment of funds, the amount set apart for any subdistrict shall not be increased or diminished by reason of any deficit or surplus in the funds previously apportioned to such subdistrict. (1885, March 20: 82 v. 92; Rev. Stat. 1880; 70 v. 195, § 60.)

The amount of funds apportioned to any sub-district for school purposes in any one year cannot be increased or diminished by reason of any deficit or surplus in the funds previously apportioned to that sub-district or to any other sub-district. 2 C. C., 475.

An equal division of the school funds of a township between the several sub-districts is not required, and such a division would, in a very few instances, be an equitable one. The object to be attained is to afford equal school facilities to all the children of a district as nearly as possible. Com.

Sec. 3968. [How contingent fund to be applied in Toledo.] In the city of Toledo, at each annual settlement of the treasurer of the board of education with the county auditor, there shall be placed to the credit of a sinking fund so much of the proceeds of the levy for contingent fund, as would be produced by a levy of two mills and the treasurer shall apply the same in payment of school bonds, and interest thereon, and to no other purpose. (1884, Feb. 26; 81 v. 26; Rev. Stat. 1880; 75 v. 526, § 56.)

Sec. 3969. [County commissioners to levy contingent fund when board neglects.] If the board of education of any district fail in any year to estimate and certify the levy for a contingent fund, as required by this chapter, or to provide sufficient school privilege for all the youth of school age in the district or to provide for the continuance of any school in the district for at least six months in the year, or to provide for each school an equitable share of school advantages as required by this title, or to provide suitable school houses for all the schools under its control, the commissioners of the county to which such district belongs, upon being advised and satisfied thereof, shall do and perform any or all of said duties and acts, in as full a manner as the board of education is by this title

authorized to do and perform the same; and the members of a board who cause such failure shall be each severally liable, in a penalty not exceeding fifty nor less than twenty-five dollars, to be recovered in a civil action in the name of the state upon complaint of any elector of the district, which sum shall be collected by the prosecuting attorney of the county, and when collected shall be paid into the treasury of the county, for the benefit of the school or schools of the district. (72 v. 59, § 59.)

An appointment of superintendent of schools by the county commissioners on failure of a village school board to elect is the same as if appointed by the board; he is to be paid out of its funds. 3 N. P., 236.

If a board has levied up to the full limit allowed by law, and the sum produced is not sufficient to continue the schools of the district for six months, there seems to be no remedy. But if a levy under this limit fails to sustain the schools for the minimum time prescribed in this section, then an appeal should be made to the county commissioners, whose duty it will be to raise the levy to the highest limit warranted by the law; and they will be justified in acting as soon as they are satisfied that the amount levied by the board of the district will be insufficient to meet the demands of the law. Com.

The law does not seem to intend that the commissioners shall stop a school which has come under their control, when six months' school has been taught during the year. They should be governed by the customs of the district. In a city they should keep up the schools forty weeks, if that has been the custom. Com.

Sec. 3970. [County auditor to collect fines, etc., and inspect section sixteen accounts.] The auditor of each county shall collect, or cause to be collected, all fines and other money, for the support of common schools in his county, and pay the same to the county treasurer; he shall inspect all accounts of interest accruing on account of section sixteen or other school lands, whether the same is payable by the state or by the debtors; and he shall take all proper measures to secure to each school district in his county the full amount of school funds to which it is entitled. (70 v. 195, § 120.)

Surplus in Dow tax may be transferred to school fund; see Sec. 2834d, 94 v. 60.

FINES TO BE PAID INTO SCHOOL FUND.

Secs. 1050 and 1051. Penalty against county auditors for failing to report to state auditor.

Secs. 1052 and 4215. Relating to dog tax.

Sec. 1279. Relating to the disposition of the proceeds of the sale of timber growing on state or school lands, unlawfully cut down.

Secs. 1280 and 1281. Providing for the disposition of the proceeds of the sale of unclaimed property, stolen, embezzled, or obtained under false pretenses.

Sec. 1375. Penalty against township trustees and treasurers who refuse to serve.

Sec. 1504. Penalty against township clerk for failure to make detailed statement.

Sec. 1524. Penalty against assessors for neglecting or refusing to make out and return statistics.

Sec. 1525. Penalty against any person, company, or corporation, refusing to make out and deliver a statement of facts for taxation.

Sec. 3225. Relating to the proceeds of the sale of unclaimed goods by express companies, common carriers, etc.

Sec. 3479. Penalty for avoiding toll on turnpikes or plank road.

Sec. 3969. Penalty against member of board of education who fails to perform certain duties.

Sec. 4027. Penalty against parents and guardians for detaining children from school contrary to law.

Sec. 4038. Penalty against the clerk of a local board for failure to take the school enumeration.

School Funds.

Ch. 6.

Sec. 4045. Penalty against treasurers of school districts for failure to make annual settlement.

Sec. 4061. Penalty against county auditors and clerks of boards of education for failing to make certain reports.

Sec. 4063. Penalty against county auditors for failure to make enumeration return.

Secs. 4088 and 4089. Penalty against institute committee for failure to make required report.

Secs. 4201 and 4204. Penalty for allowing certain animals to run at large.

Sec. 4215. Penalty against fishing unlawfully.

Sec. 4382. Penalty against owners or keepers of wharf boats.

Sec. 4398. Relating to peddlers' license.

Secs. 4401 and 4402. Penalties against peddlers who do not obtain a license.

Sec. 4487. Penalty against auditors, engineers, commissioners, and probate judges, who fail to perform certain duties relating to county ditches, sinkholes, etc.

Sec. 6396. Penalty against assessors, physicians, midwives, clergymen, sextons and probate judges, who fail to furnish statistics of births and deaths.

Sec. 6986-10. Unlawful employment of minors.

SINKING FUNDS.

(3970) Sec. 1. [Tax in Cleveland for school bonds and interest.]

Boards of education in city districts of the second grade of the first class are hereby authorized and required, for the purpose of providing for the payment of bonds of said boards and the interest thereon, to levy, annually, for a period of nine years beginning with the year 1894 and ending with the year 1902, upon the general tax duplicate of said city district in addition to its levys for all other purposes, a tax not exceeding two-fifths of a mill on the dollar in each year; and said boards of education are hereby authorized and required, for the purpose of providing for the payment of said bonds and interest as aforesaid, to levy, annually, for the period of five years beginning with the year 1903 and ending with the year 1907, upon the general tax duplicate of said city districts, in addition to its levys for all other purposes, a tax not exceeding one-fifth of a mill on the dollar in each year; and the tax to be so levied shall be applied to no other purpose than the payment of said bonds and interest thereon; provided, that in case said boards of education shall refuse, fail or neglect to create a sinking fund; and to appropriate to use thereof the money as hereinafter provided, then and in that case, immediately upon such refusal, failure or neglect, the authority to levy the tax herein provided for shall cease. (90 L. L. 97.)

(3970-2) Sec. 2. [Sinking fund proceeds; commissioners; bond; removal; vacancies.] That it is hereby made the duty of said boards of education within one year after the passage of this act, for the purpose of providing the means to pay the principal of all bonds and interest thereon as provided in section one of this act, to create a sinking fund, and no part of said fund so created, and none of the money deposited in or appropriated to the use of said sinking fund shall be used for any other purpose whatever than that for which it was created; and the said boards of education shall provide for the control and management of said sinking fund and

for the appointment of five commissioners who shall be known as the "board of education sinking fund commissioner"; and they shall be appointed by the said boards of education, and serve without pay, and each shall give bond in such sum as may be fixed by said boards of education, and said commissioners shall not be removed from office except by the said boards of education for cause, and the order for such removal shall be in writing, specifying the reason therefor, and all vacancies occurring in said sinking fund commission shall be filled by the said boards of education. (90 L. L. 97.)

(3970-3) **Sec. 3. [Annual appropriation to sinking fund.]** That said boards of education shall appropriate to the use of said sinking fund when so created, the tax provided for in section one of this act; and it shall further be the duty of said boards of education, annually, for a period of fourteen years beginning with the year 1894 and ending with the year 1907, to appropriate to the use of such sinking fund when so created from the regular revenues of said boards provided for by law prior to the passage of this act, the sum of forty thousand dollars. (90 L. L. 97.)

(3970-4) **Sec. 4. [Reimbursement of any loss.]** That it shall be the duty of said boards of education to appropriate to the use of said sinking fund, all money that may hereafter be paid into their respective treasuries to make good any loss sustained or occasioned by reason of the defalcation of the treasurer of any of said boards of education. (90 L. L. 97.)

(3970-5) **Sec. 5. [Repeals.]** That all the provisions of the statutes of this state in force when this act takes effect, which conflict with any of the provisions of this act shall be held to be superceded by the latter, and as to the matter of inconsistency, and not otherwise, the same are hereby repealed. (90 L. L. 97.)

(3970-6) **Sec. 1. [Sinking fund in city districts of first class.]** For the purpose of creating a sinking fund for the gradual extinguishment of the bonded indebtedness of city school districts of the first class, the board of education of such districts shall annually and not later than the first day of January, of each year, set aside from its revenue, until payment of the bonded indebtedness be fully provided for, a sum not less than one-twentieth of the total bonded indebtedness, outstanding at said first day of January. The sum so set aside shall be deposited in the treasury and applied by order of the board of education to the extinguishment of the bonded indebtedness and to no other purpose. (92 v. 367.)

(3970-7) **Sec. 2. [Investment.]** The board of education shall invest all moneys set aside for sinking fund purposes in bonds of the United States, State of Ohio, city of Cincinnati, city of Toledo, city of Columbus, or in bonds of its own issue. (92 v. 367.)

(3970-8) Sec. 3. [Use of interest; minimum uninvested.] All interest received from such investments shall be deposited in the treasury to the credit of the sinking fund, and reinvested in like manner. At no time shall there be over one thousand dollars kept on deposit if investment can be made without jeopardizing the prompt redemption of bonds failing due. (92 v. 367.)

(3970-9) Sec. 4. [Deposit and how drawn.] All assets belonging to the sinking fund shall be deposited in the treasury, and when so deposited they shall be drawn only on the written order of the board of education, signed by its president and countersigned by its clerk. (92 v. 368.)

CHAPTER 7.

PROVISIONS APPLYING TO ALL BOARDS.

SECTION.

3970-10. Women may vote and be voted for at certain school elections.

3970-11. Separate ballot boxes.

3970-12. Registration.

3971. Corporate powers of board of education; sales of property exceeding \$300 in value; exchange of real estate with municipal corporation.

3972. What property the boards have title to.

3973. School property exempt from taxation.

3974. Conveyances and contracts.

3975. Boards may accept bequests.

3976. Process against boards and how served.

SECTION.

3977. Prosecuting attorney to act as counsel of school boards.

3978. Tie votes to be decided by lot.

3979. Oath of members and other officers.

3980. Organization; selection of officers.

3981. Vacancies in board; office of sub-director; how filled.

3982. Quorum; yeas and nays to be taken in certain cases.

3983. Absence of president or clerk.

3984. Record of proceedings, and attestation thereof.

3985. Boards to make rules; illegal meetings.

3986. Board may make and enforce rules for vaccination.

3986-1. Display of U. S. flag.

(3970-10) Sec. 1. [Women may vote and be voted for at certain school elections.] Every woman born or naturalized in the United States, of the age of twenty-one years and upward, who shall have been a resident of the state one year, and of the county, town, township or other election district such time as the law provides for men, preceding any election held for the purpose of choosing any school director, member of the board of education or school council under the general or special laws of the state, shall be entitled to vote and be voted for at such election for any such officer or officers. (91 v. 182.)

The constitutional power of the legislature to provide for common schools is not limited by the definition of elector in Const., V, Sec. 1, and the right to vote for school officers may be conferred on women. 9 C. C., 134.

This section limits the voting privileges of women, it does not entitle them to vote on such questions as special tax levy, bond issue, erection of public buildings, etc., although the same be for school purposes. Com.

(3970-11) Sec. 2. [Separate ballot boxes.] A separate box shall be provided for the ballots of those voting for any such office mentioned in section one of this act. (91 v. 182.)

More than one ballot box is only required where officers are to be elected for whom women cannot vote. Com.

(3970-12) Sec. 3. [Registration.] All laws relating to the registration of voters shall apply to women upon whom the right to vote is herein conferred, provided, that the names of such women may be placed upon a separate list. (91 v. 182.)

Sec. 3971. [Corporate powers of board of education; sales of property exceeding three hundred dollars in value; exchange of real estate with municipal corporation.] The boards of education of all school districts now organized and established, and of all school districts organized under the provisions of this title, shall be and they are hereby declared to be bodies politic and corporate,

and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing, and disposing of property, both real and personal, and taking and holding in trust, for the use and benefit of such districts, any grant or devise of land, and any donation or bequest of money or other personal property, and of exercising such other powers, and having such other privileges as are conferred by this title: but when a board of education decides to dispose of any property, real or personal, held by it in its corporate capacity, exceeding in value three hundred dollars, it shall sell the same at public auction, after giving at least thirty days' notice thereof, by publication in some newspaper of general circulation, or by posting notices in five of the most public places in the district in which such property is situate. Provided, that when such board has twice offered a tract of real estate for sale at public auction, as hereinbefore provided, and the same is not sold, the board may sell said real estate at private sale, either as an entire tract, or in parcels thereof, as the board may deem best, and the president and secretary of the board shall execute and deliver the deed or deeds necessary to complete such sale or sales. Provided, that upon a vote of a majority of the members of any board of education, and a concurring vote of the council of any municipal corporation, that an exchange of any real estate held by such board of education for school purposes, for real estate held by such municipal corporation for municipal purposes, will be mutually beneficial to such school district, and to such municipal corporation, such exchange may be made by conveyances, to be executed by the mayor and clerk of the municipal corporation, and by the president and clerk of such board of education. (1888, March 30: 85 v. 133; 80 v. 36; Rev. Stat. 1880; 70 v. 195, § 37; S. & C. 1350.)

Sec. 2834b. The commissioners of any county, the trustees of any township and the board of education of any school district, except in cities of the first class of first, second and third grade, shall enter into no contract, agreement, or obligation involving the expenditure of money, nor shall any resolution or order for the appropriation or expenditure of money be passed by any board of county commissioners, township trustees or board of education, except in cities of the first class, of first, second and third grade, unless the auditor or the clerk thereof shall first certify that the money required for the payment of such obligation or appropriation is in the treasury to the credit of the fund from which it is to be drawn, or has been levied and placed on the duplicate, and in process of collection and not appropriated for any other purpose; which certificate shall be filed and immediately recorded, and the sums so certified shall not thereafter be considered unappropriated until the county, township or board of education, except in cities of the first class, of first, second or third grade, is fully discharged from the contract, agreement or obligation, or so long as the order or resolution is in force, and all contracts, agreements or obligations, and all orders or resolutions entered into or passed contrary to the provisions of this section shall be void. Provided that none of the provisions of this section

Ch. 7.

Provisions Applying to All Boards.

shall apply to the contracts authorized to be made by other provisions of law for the employment of teachers, officers, and other school employes of boards of education.

Penalty for members of board of education receiving compensation, see Sec. 6975, under 3974.

For "an act to authorize certain boards of education to sell real estate at private sale to municipal corporations," see 51 v. 33.

For "an act to authorize the use of school houses for literary entertainments, school exhibitions, singing schools, and religious exercises," see Sec. 3957-1.

A board of education is not liable, in its corporate capacity, for damages for an injury resulting to a pupil while attending a common school, from its negligence in the discharge of its official duty in the erection and maintenance of a common school building under its charge, in the absence of a statute creating a liability. 30 O. S., 37.

A dedication for school purposes is for a specific use, and confers no power of alienation so as to extinguish the use. 15 O. S., 221.

Boards of education are invested with the title to the property of their respective districts in trust for the use of public schools; and a lease of a public school house for the purpose of having a private or select school taught therein, for a term of weeks, is in violation of the trust; and such use may be restrained at the suit of a resident taxpayer of the district. 35 O. S., 143.

Where land was conveyed to a township board of education, its successors and assigns, for the use of school purposes only, and the board afterward sold the land at public outcry to C.; Held, that the sale was not in violation of the terms of the grant. 37 O. S., 262.

The board of education being a legal entity empowered to sue, has capacity to sue its defaulting treasurer without resorting to his bond. 51 O. S., 115.

An officer acting within the scope of his authority is only responsible for an injury resulting from a corrupt motive. 17 O., 402.

A board of education is not subject to quo warranto, since it cannot be ousted; it is not such a corporation as R. S., Sec. 6761, contemplates, but a state agency. 7 C. C., 152.

Corporations must take and grant by their corporate names. 2 Kent, 11 Ed., 351.

Sec. 3972. [What property the boards have title to.] All property, real or personal, which has heretofore vested in and is now held by any board of education, or the council of any municipal corporation, for the use of public or common schools in any district, is hereby vested in the board of education provided for in this title, having under this title jurisdiction and control of the schools in such district. (70 v. 195, § 39.)

Penalty for delacing school property; Sec. 6877.

Penalty for burning school property; Sec. 6831.

Penalty for burglarizing school house; Sec. 6835.

Penalty for attempting to commit felony in school house; Sec. 6836.

Penalty for breaking into school house to steal; Sec. 6837.

Penalty for disturbing meetings; Sec. 6896.

Leasing and selling school lands granted by the government; Secs. 1403-1440.

Under the act of May 1, 1873, the corporate boards of education therein provided for succeed to all existing rights of action in relation to the common school property and funds which were theretofore vested, by previous legislation, in other agencies to whose control such property and funds had been confided. 26 O. S., 571.

See 35 O. S., 143, under Sec. 3971.

See 41 O. S., 680, under Sec. 3888.

Sec. 3973. [School property exempt from taxation.] All property, real or personal, vested in any board of education, shall be exempt from tax, and from sale on execution, or other writ or order in the nature of an execution. (70 v. 195 § 72.)

Non-taxation of school property; Sec. 2732, R. S.

Provisions relating to taxation of school, ministerial, and other lands; Sec. 2733, R. S.

School property is not liable to assessment for street improvement; nor can a judgment be rendered against the board of education for the payment of the assessment out of its contingent fund. 48 O. S., 83.

Sidewalk—School property not assessable for. 48 O. S., 87.

Property purchased by a board of education, and upon which there is a mortgage lien, may be sold on foreclosure. 39 B., 76; Aff'd by Supreme Court.

Sec. 3974. [Conveyances and contracts.] All conveyances made by a board of education shall be executed by the president and clerk thereof; no member of a board shall have any pecuniary interest, either direct or indirect, in any contract of the board, or be employed in any manner for compensation by the board of which he is a member, except as clerk or treasurer; and no contract shall be binding upon any board unless it be made or authorized to be made at a regular or special meeting of the board. (70 v. 195, §§ 21, 38.)

Penalty for member of board being interested in contract for the purchase of property, supplies or fire insurance; Sec. 6969.

Sec. 6975. A member of a board of education organized under any law of this state who accepts or receives any compensation for his services as such member, except as clerk or treasurer of such board shall be deemed guilty of embezzlement of the amount so received, and punished accordingly.

The individual act of a majority of the members of a school board acting separately—as signing a contract—are not the corporate acts of the board and do not bind it. 22 O. S., 144.

A contract by a firm to sell goods to a board of education, one member of which board is a partner in the firm, is void under Sec. 3974, and any resident taxpayer may obtain injunction against payment thereof. 1 N. P., 145.

The failure of an officer to attach his official title to his signature, will not affect the instrument so far as the district is concerned; provided, the contract was authorized, and made for the district, and this fact can be shown. Com.

School property should be insured, but not in a company represented by a member of the board. See Sec. 6969, R. S. Attorney General.

A township clerk is a member of the board of education and cannot be employed for compensation by the board of which he is a member. Com.

No contract, appropriation, etc., unless money is in treasury and set apart, except in certain cities; see Sec. 2834b, given in full under Sec. 3971.

Sec. 3975. [Boards may accept bequests.] All boards of education may, by the adoption of a resolution, accept any bequest made to them by will, upon the conditions and stipulations contained in the will; and for the purpose of enabling such boards to carry out the conditions and limitations upon which the bequest is made, they are authorized to make all rules and regulations that may be required to fully carry into effect the provisions of the will in relation to the bequest. (73 v. 205, § 2.)

Sec. 3976. [Process against boards and how served.] The process in all suits against a board of education shall be by summons, and shall be served by leaving a copy thereof with the clerk or president of the board. (70 v. 195, § 68.)

Sec. 3977. [Prosecuting attorney to act as counsel of school boards.] The prosecuting attorney of the proper county, or, in case of a city district, the city solicitor, shall prosecute all actions which, by this title, may be brought against any member or officer of a school board, in his individual capacity, and shall act in his official capacity as the legal counsel of such boards or officers in all civil actions brought by or against them in their corporate or official capacity; but no prosecuting attorney or city solicitor shall be a member of the

board of education; provided, that in counties having a county solicitor, such officer shall prosecute all actions which may be brought against any member or officer of a school board in his individual capacity, and shall do and perform all the duties herein required of the prosecuting attorney, as to schools, school boards, and officers of schools in the county, outside of said city; but for such service he shall receive no additional compensation. (1882, March 2: 79 v. 26; Rev. Stat. 1880; 70 v. 195, § 69.)

Prosecution for injuries to timber on school lands; Sec. 1279.

Prosecuting attorney shall apply in cities of second class, third grade *et. for* injunction against misapplication of school funds or abuse of powers; Sec. 1781.

Prosecuting attorney cannot enjoin application of money by school board, but a taxpayer probably could. 11 C. C., 41 (Aff'd; no Rep.; 53 O. S., 656).

We are of the opinion that board of education may employ counsel in any action in which they are a party or in which the clerk or treasurer of the board may in his official capacity be a party; provided, the cause involves the property of the district, if in their opinion such employment is for the best interests of their trust, and counsel thus employed may act either with or without the co-operation of the prosecuting attorney as the exigencies of the case may seem to require, and as the costs and attorney fees are part of the expenses incident to such litigation they may provide for their payment out of the contingent fund of the district; provided it is not otherwise appropriated. Attorney General.

Sec. 3978. [Tie vote; failure to elect or refusal to serve.] In all cases of tie votes at an election for [director] directors or subdirectors, the judges of election shall decide the election by lot; and in other cases of failure to elect directors or subdirectors, or in cases of a refusal to serve, the board shall appoint. (93 v. 47; 89 v. 95; 70 v. 195, § 43.)

Filling of vacancies; see Sec. 3981.

After dissolution of the election board the officers are functi officio. Hence, if five days after dissolution they meet and recount the ballot their recount is not an official act. 21 O. S., 216.

Should the judges of election fail to decide a tie vote, the board should appoint. Com.

Sec. 3979. [Oath of members and other officers.] Each person elected or appointed a member of a board of education, or elected or appointed to any other office under this title, shall, before entering upon the duties of his office, take an oath or affirmation to support the constitution of the United States and the constitution of the state of Ohio, and that he will perform faithfully the duties of his office; which oath or affirmation may be administered by the clerk or any member of the board. (71 v. 15, § 42.)

But a person so elected may appear before any person authorized by law to administer an oath, and may take his oath of office. This should be done in case the member elect is, for any reason, unable to attend the meeting for organization. The certificate of the officer administering the oath should be sent to the board and copied in the records, to obviate all questions. For the same reason, a record should be made of the oath administered to each member. Com.

Sec. 3980. [Organization; selection of officers.] Each board of education shall organize by choosing one of its members president, and, except township boards, by choosing also a clerk, who may or may not be a member of the board; if at the organization of a township board

Provisions Applying to All Boards.

Ch. 7.

the township clerk is absent, the board shall appoint one of its members clerk *pro tempore*; each board of education, however, as chosen under the provisions of section 3899, shall further, at its first regular meeting after its annual organization, choose or appoint an auditor, who shall not be a member of the board, and who shall receive such compensation and perform such duties as the board may provide for and determine; and such organization shall be effected on the third Monday of April of each year, except as otherwise provided in section thirty-nine hundred and fourteen. (1887, March 21: 84 v. 212; Rev. Stat. 1880; 70 v. 195, § 29; 70 v. 241, § 44.)

President and clerk of township boards to attend March meeting of township trustees; Sec. 1458.

Inspection of school funds in case of non-attendance of president and clerk as required by Sec. 1458; see Sec. 1511.

Number of votes necessary to elect officers; see Sec. 3982.

The treasurer and president of a school board cannot be the same person; their duties are inconsistent. Thus, the treasurer cannot pay except on an order signed by the president. Hence, if the treasurer is made president he will be ousted as treasurer. 5 B., 502.

Sec. 3981. [Vacancies in board of education or office of subdirector; how filled.] Vacancies in any board of education, or vacancies in the office of subdirector of any subdistrict arising from death, non-residence, resignation, expulsion for gross neglect of duty, failure of a person elected or appointed to qualify within ten days after the annual organization or after his appointment, or from other cause, which occur more than fifteen days before the next annual election, the board shall fill within ten days from the occurrence of the vacancy, until the next annual election, when a successor shall be elected to fill the unexpired term; provided such vacancies [in township boards] may be filled by the board of education at the next regular meeting, as prescribed in section 3920. (93 v. 48; 89 v. 95; 88 v. 54; 70 v. 195, § 43.)

Sec. 11. When an elective office becomes vacant and is filled by appointment, such appointee shall hold the office till his successor is elected and qualified, and such successor shall be elected at the first proper election that is held more than thirty days after the occurrence of the vacancy; but this section shall not be construed to postpone the time for such election beyond that at which it would have been held had no such vacancy occurred, nor to affect the official term, or the time for the commencement of the same, of any one elected to such office before the occurrence of such vacancy.

Tie vote at election; failure to elect or refusal to serve, in township districts; see Sec. 3978.

A resignation takes effect from its date and not from its acceptance, at least to authorize filling the vacancy, the common law rules requiring an acceptance being abrogated in Ohio except where otherwise specially provided. 51 O. S., 74.

Where one, elected to an office, dies before his term begins, no vacancy is thereby created in the office until the end of the term of the existing incumbent; and if this falls within thirty days of the next proper election (Sec. 11, R. S.), the vacancy cannot be filled by an election thereat. 55 O. S., 195.

Temporary absence from home will not vacate an office; but if such absence creates embarrassment the holder ought to resign. Com.

While the law gives ten days in which to fill a vacancy, it is evidently the intention that it should be filled at the earliest possible date, and before the transaction of business by the board. Com.

Sec. 3982. [Quorum; yeas and nays to be taken in certain cases.]

A majority of the board of education shall constitute a quorum for the transaction of business; upon a motion to adopt a resolution authorizing the purchase or sale of property, either real or personal, or to employ a superintendent, teacher, janitor, or other employe, or to elect or appoint an officer, or to pay any debt or claim, or to adopt any text book, the clerk of the board shall call, publicly, the roll of all the members composing the board, and enter on the record required to be kept the names of those voting "aye," and the names of those voting "no;" if a majority of all the members of the board vote "aye," the president shall declare the motion carried; and upon any motion or resolution any member of the board may demand the yeas and nays, and thereupon the clerk shall call the roll, and record the names of those voting "aye" and those voting "no." (71 v. 15, § 42.)

Records of *quasi* corporations are not considered of that absolute verity that parole testimony is inadmissible to show facts upon which the record is silent. 5 O., 136.

See 22 O. S., 144, under Sec. 3974.

An agreement by members of a township board of education, acting in their individual capacity, to purchase from another person apparatus for the schools of the township, and to ratify such contract of purchase at the next meeting of the board, is contrary to public policy, and therefore illegal and void, and not enforceable either against the board or the members thereof as individuals. 29 O. S., 419.

The order of the clerk on the treasurer is not negotiable, and the written acceptance of an order by a treasurer who has gone out of office imposes no greater obligation on the treasurer to pay than if it had been presented without such endorsement. 22 O. S., 144.

Calling the roll and entering the "ayes" and "noes" is mandatory else the election is void. 52 O. S., 138.

Two of the directors of a sub-school district, being a majority of the board, are constituted by the statute a quorum to do business at all meetings of the directors. 3 C. C., 517.

Where the minutes show the aye and nay vote and how each member voted but does not state expressly that the roll was called, this is sufficient compliance with this section. 13 C. C., 207.

An election to fill a vacancy on the board is not an election of an officer and would not come under the provisions of this section. Com.

In case a board should really lose half or more of its members, the county commissioners must keep up the schools. As they may do all that a board could do, they may appoint a new board, or members enough to proceed with the appointments to the completion of a new board; see Sec. 3969. Com.

In all cases except those which are declared to require a majority of all the members composing the board, a majority of a quorum is sufficient to pass a measure, and the roll need not be called unless demanded by a member of the board. Com.

No member of a board can delegate his power to act to another person, either a member of the board or otherwise. It is said that this is sometimes done. But acts depending on such delegated votes are void. For heavy penalty attached to such assumption of official duty, see Revised Statutes, Sec. 6913. Com.

Sec. 3983. [Absence of president or clerk.] If, at any meeting of the board, either the president or the clerk is absent, the members present shall choose one of their number to serve in his place pro tempore; and if both are absent, both places shall be so filled; but on the appearance of either at the meeting, after his place has been so filled, he shall immediately assume the duties of his office. (70 v. 195, § 31.)

Sec. 3984. [Record of proceedings and attestation thereof.] The clerk of the board shall record the proceedings of each meeting, in a book

to be provided by the board for that purpose, which shall be a public record; the record of proceedings at each meeting of the board shall be read at its next meeting, corrected if necessary, and approved, and the approval shall be noted in the proceedings; and after such approval the president shall sign the record, and the clerk shall attest the same. (70 v. 195, § 29; 71 v. 15, § 42.)

Recording of vote in certain cases; see Sec. 3982.

See 5 O., 136, under Sec. 3982.

Where a board at a regularly called meeting, makes a contract with a qualified teacher, but no record is made of the proceedings, the teacher may prove, if he can do so by competent paroled testimony, such official action of said board. 3 C. C., 517.

Sec. 3985. [Boards to make rules; illegal meetings.] The board of each district shall make such rules and regulations as it may deem expedient and necessary for its government, and the government of its appointees and the pupils; and no meeting of a board of education not provided for by its rules, or by law, shall be legal unless all the members thereof have been notified as provided for in section *thirty-nine hundred and twenty*. (70 v. 195, § 54.)

As the act authorizing the board to make rules does not provide how they shall be enforced, the board has discretionary power over the subject. A rule that a pupil not prepared with a rhetorical exercise should be suspended unless excused for cause is reasonable. Neither the board nor the teacher suspending a pupil under such rule is liable for damages. 29 O. S., 89.

The rules must not be inconsistent with Sec. 3982, 52 O. S., 138, 149.

See 2 C. C., 510, under Sec. 4020-14.

If a deliberative body adopts rules, but no rule for suspending a rule, a suspension cannot be by a bare majority, for the rule would then have no force as a rule. 2 C. C., 510, 517.

Corporal punishment may be inflicted if such are the rules of the school, and an unknown predisposition to certain diseases will not make an otherwise proper punishment tortuous. 4 B., 81.

A reporter is on the floor of a school board as a privilege and not as a right, a gallery being provided for the rest of the public, and the board may expel him. That he was on the floor by a rule of the board, and that by another rule change the rules cannot be had without laying over for a meeting, is an objection on a point of order which persons not members cannot avail themselves of. 9 B., 242.

A court may review the action of a board and pass upon the reasonableness of any of its rules, but if they have erred, while discharging their duty in good faith, they are not liable to action therefor. 32 Vermont, 224.

SCHOOL DISCIPLINE.

The conduct of the pupils upon any part of the premises connected with the school house or in the immediate vicinity of the same (the pupils being thus virtually under the care of the teacher), whether within the regular school hours or before or after them, is properly cognizable by the teacher. And any disturbance made by them within the range injuriously affecting in any way the interests of the school, may clearly be the subject of reproof and correction by the teacher. Barden, School Law, p. 79.

The right of a schoolmaster to correct his scholars has always been practically and judicially sanctioned, but the chastisement must not exceed the limits of moderate correction; and though courts are bound, with a view to the maintenance of necessary order and decorum in schools, to look with all reasonable indulgence upon the exercise of this right, yet, whenever the correction shall appear to have been clearly excessive and cruel, it must be adjudged illegal. 19 Vt., 103.

The parent may be said to exercise a judicial authority in determining what punishment *by himself*, is proper for his child, but is liable, criminally, in a clear case of excess. Johnson v. State, 2 Hump, 283. The teacher also acts judicially in such a case, and is not to be made liable, civilly or criminally, unless he acted with express malice, or was guilty of such excess that malice must be implied. 2 Dev. and Bat., 365; 4 Ind. R., 290.

Ch. 7.

Provisions Applying to All Boards.

Whether under the facts the punishment is excessive, must be left to the jury to decide. *Commonwealth of Massachusetts v. Randall*, 4 Gray, 38.

If the effects of acts done out of school houses reach within the school-room during school hours, and are detrimental to good order and the best interests of the pupils, it is evident that such acts may be forbidden. 31 Ia., 562.

Though a schoolmaster has, in general, no right to punish a pupil for misconduct committed after the dismissal of school for the day and the return of the pupil to his home, yet he may on the pupil's return to school, punish him for any misbehavior, though committed out of school, which has a direct or immediate tendency to injure the school and to subvert the master's authority. 32 Vt., 114.

While the decisions in Ohio are very limited on this subject, it seems to be the consensus of opinion throughout the different states that the teacher's authority over a pupil extends to all actions taking place in the immediate vicinity of the school; that on the pupil's way to and from school the authority of the parent and teacher is concurrent, the parent taking precedent when both are present, and that the teacher can call a pupil to account for misconduct, committed at any time, tending to impair the usefulness of the school or to subvert the teacher's authority. Com.

Sec. 3986. [Board may make and enforce rules for vaccination.]

The board of each district may make and enforce such rules and regulations to secure the vaccination of, and to prevent the spread of smallpox among the pupils attending or eligible to attend the schools of the district, as in its own opinion the safety and interest of the public require; and the boards of health and councils of municipal corporations, and the trustees of townships, shall, on application of the board of education of the district, provide at the public expense, without delay, the means of vaccination to such pupils as are not provided therewith by their parents or guardians. (69 v. 22, § 1.)

Board of health may inspect sanitary condition of schools and school buildings and close schools during an epidemic; see Sec. 2135, R. S.

(3986-1). [Display of U. S. flag.] All boards of education be authorized and required to display the U. S. national flag upon all school houses under their control, during all day school sessions in fair weather, and to be displayed on the inside of the school house on all other days, and said boards of education shall make all rules and necessary regulations for the care and keeping of such flags, the expense of the same to be paid out of the contingent funds of such boards. (92 v. 86.)

CHAPTER 8.

SCHOOL HOUSES AND LIBRARIES.

SECTION.

3987. School houses.
 3987-1. Regulating use of school houses.
 3988. Directions for bidding and letting contracts.
 3989. Erection of school houses in joint sub-districts.
 3990. When board may appropriate property.
 3991. When and how question of tax levy submitted to voters.
 3992. If levy approved, board to certify it to auditor.
 3993. How the levy may be anticipated.
 3994. Issue of bonds by boards of city districts of the first class.
 3994a. Issue of deficiency bonds by Cleveland board.
 3994b. Cleveland board may borrow money and issue bonds to extend but not increase bonded indebtedness.
 3994c. Regulations as to issue of Cleveland bonds.
 3994d. Regulations as to sale of Cleveland bonds.
 3995. Certain boards may appropriate money for library, etc.
 3996. Levy for library in cities.
 3997. How library tax to be expended.
 3998. Board may appoint librarian, etc.
 3999. In certain cities may appoint managers of library; board of trustees in Cincinnati, how appointed; terms; vacancies.
 3999a. Residents of Hamilton county entitled to use of city library.
 3999b. Powers of trustees in Cincinnati; employment of librarian and assistants.
 3999c. Tax for library purposes in Cincinnati.
 3999d. Disposition of unexpended fund heretofore raised for library purposes in Cincinnati.
 3999e. Who ineligible as members of library board.
 4000. Cleveland public library board.
 4001. Powers and duty of library board.
 4002. Library tax and how expended.
 4002-1. Cleveland library board to hold title and control property.
 4002-2. Can purchase, lease or condemn.
 4002-3. Proceedings to condemn.
 4002-4. Donations.
 4002-5. Exempt from tax and execution.
 4002-6. Oath.
 4002-7. Organization.
 4002-8. Annual report.
 4002-9. No member of board to be interested in contract, except; validity of contract.

SECTION.

- 4002-10. Use of library and reading-room.
 4002-11. Bonds to pay for lands and buildings.
 4002-12. Resolution to issue; sale of.
 4002-13. Sinking fund.
 4002-14. Trustees of such sinking fund.
 4002-15. Their organization.
 4002-16. Their duty to certify tax.
 4002-17. Investments by.
 4002-18. One-tenth of one mill may be appropriated in certain cities for maintaining public library; proviso.
 4002-19. Toledo public library; tax for library.
 4002-20. (Repealed.)
 4002-21. Board of trustees.
 4002-22. Transfer of libraries to such boards by board of education.
 4002-23. Organization of trustees; regulation; powers; deposit of library fund; warrants; power to purchase or condemn ground; issue and sale of public library building bonds; payment of said bonds and interest; title to grounds purchased; librarians and assistants.
 4002-24. Additional bonds authorized to be issued for certain purposes.
 4002-25. Purchase of a site for library.
 4002-26. Appropriations of private property.
 4002-27. Additional building bonds.
 4002-28. Said library to be free, subject to reasonable rules.
 4002-29. Annual report to city council.
 4002-30. Penalty for injuring library property.
 4002-31. Power of trustees to accept devises, donations, etc.
 4002-32. Dayton public library board; election of.
 4002-33. Political composition of; terms; vote, required to elect.
 4002-34. Powers and duties.
 4002-35. Expenses of library for ensuing year.
 4002-36. Tax for library fund; custodian; disbursements and balance.
 4002-37. Provision governing board.
 4002-38. Museum may be established.
 4002-39. Certain cities and villages may have library; tax.
 4002-40. Directors.
 4002-41. Organization, by-laws, etc.; control of expenditure; custody of building; how money drawn from treasury; librarian and assistants.
 4002-42. Who may use library.
 4002-43. Annual report.
 4002-44. Donations.
 4002-45. Tax to assist existing library association.

Ch. 8.

School Houses and Libraries.

SECTION.

- 4002-46. Library association in cities fourth grade, second class; levy.
 4002-47. Disposition of tax.
 4002-48. Association to render account; power to levy tax.
 4002-49. Tax in lieu of other taxes; purchase of school apparatus; levy.

SECTION.

4003. Consolidation of libraries in Portsmouth authorized.
 4004. Board of Portsmouth to appoint library committee.
 4005. Powers and duties of such committee.
 4006. Powers and duties of library committees in Portsmouth.

For school house sites in certain villages and cities, see Sec. 2233-1, R. S.

For public library in certain cities, see Sec. 2680-19, R. S.

School house clocks, on—shall run by standard time; see Sec. 4446-4, R. S.

Penalties for injuries to school property; see notes under Sec. 3972.

Board of health authorized to inspect sanitary condition and abate nuisances; see Sec. 2123, R. S.

Sec. 3987. [School houses.] The board of education of any district is empowered to build, enlarge, repair and furnish the necessary school houses, purchase or lease sites therefor, or rights of way thereto, or rent suitable school-rooms, provide all the necessary apparatus and make all other necessary provisions for the schools under its control; also, the boards shall provide fuel for schools, build and keep in good repair all fences inclosing such school houses, plant when deemed desirable shade and ornamental trees on the school grounds, and make all other provisions necessary for the convenience and prosperity of the schools within the subdistricts. (89 v. 95; 83 v. 84; 82 v. 86; Rev. Stat. 1880; 70 v. 195, § 55.)

Inspection of school houses as to safety in case of accident or fire; Secs. 2568-2572a.

Courts of common pleas may authorize an exchange of school lots; Secs. 2675-1-2675-4.

Building school houses for joint sub-districts; Sec. 3941a.

County commissioners may act as board of education under certain circumstances; Sec. 3969.

As to appropriating money for libraries; Sec. 3995.

Rules regulating the erection of public buildings; 1cs. 4238-1-4238-5.

Penalty for destroying plants or trees; Sec. 6850.

Penalty for using school house without certificate of inspector; Sec. 7010.

Under the act of March 14, 1853, a township board of education has the power to designate the particular place where school houses in sub-districts shall be built; and the powers which, in this respect, the statute confers on the local directors of a sub-district, are to be exercised in subordination to the paramount authority of the township board of education. 13 O. S., 336.

A school board is not liable as such for an injury to a pupil arising from negligence in the erection and maintenance of a public school building. 30 O. S., 37.

See 35 O. S., 143, under Sec. 3971.

A board of education will be enjoined in the exercise of its discretion where it attempts without any valid reason, or necessarily to expend the public funds for the erection of a new school house in another place in the district when the old one is suitable and satisfactory and located near the center of the district. 13 C. C., 258.

See 15 C. C., 565, under Sec. 3995.

What is apparatus? See 61 O. S., 199, under Sec. 3995.

"School and reading charts"; see 2 C. C., 363, under Sec. 3995.

Sec. 3987-1. [Regulating use of school houses.] That when, in the judgment of any board of education, it will be for the advantage of the children residing in any school district to hold literary societies, school exhibitions, singing schools, religious exercises, select or normal schools, the board of education shall authorize the opening of such school

houses for the purposes aforesaid. And the board of education of any school district shall have discretionary power to authorize the opening of such school houses for any other lawful purposes; provided, however, that nothing herein contained shall be construed to authorize any board of education to rent or lease any school house when such rental or lease shall in any wise interfere with the public schools in such district, or for any purpose other than such as is authorized by this act. (91 v. 44; 89 v. 147; 87 v. 240; 86 v. 11.)

As to local directors, see Sec. 3916.

Powers of boards of education; Sec. 3971.

Property to which boards of education have title; Sec. 3972.

Leasing a school house for a private school is a violation of the trust, and is not within the power of "disposing" of property in Sec. 3971, and a resident taxpayer may obtain injunction. 35 O. S., 143.

School houses should not be open for any purpose concerning the moral effect of which there is a difference of opinion among the residents of the district. Com.

Sec. 3988. [Directions for bidding, and for letting contracts.]

When a board of education determines to build, repair, enlarge, or furnish a school house or school houses, or make any improvement or repair provided for in this chapter, the cost of which will exceed, in city districts of the first and second class, fifteen hundred dollars, and in other districts five hundred dollars, except in cases of urgent necessity, or for the security and protection of school property, it shall proceed as follows:

1. The board shall advertise for bids, for the period of four weeks, in some newspaper of general circulation in the district, and two such newspapers, if there are so many; and if no newspaper has a general circulation therein, then by posting such advertisements in three public places therein, which advertisements shall be entered in full by the clerk, on the record of the proceedings of the board.

2. The bids, duly sealed up, shall be filed with the clerk by twelve o'clock, noon, of the last day stated in the advertisement.

3. The bids shall be opened at the next meeting of the board, be publicly read by the clerk, and entered in full on the records of the board.

4. Each bid shall contain the name of every person interested in the same, and shall be accompanied by a sufficient guarantee of some disinterested person, that if the bid be accepted, a contract will be entered into, and the performance of it properly secured.

5. When both labor and materials are embraced in the work bid for, each must be separately stated in the bid, with the price thereof.

6. None but the lowest responsible bid shall be accepted; but the board may, in its discretion, reject all the bids, or accept any bid for both labor and material which is the lowest in the aggregate for such improvement or repair.

7. Any part of a bid which is lower than the same part of any other bid, shall be accepted, whether the residue of the bid is higher or not; and if it is higher, such residue shall be rejected.

8. The contract shall be between the board of education and the bidders; and the board shall pay the contract price for the work, when it is completed, in cash, and may pay monthly estimates as the work progresses.

9. When two or more bids are equal, in the whole, or in any part thereof, and are lower than any others, either may be accepted, but in no case shall the work be divided between the makers thereof.

10. When there is reason to believe that there is any collusion or combination among the bidders, or any number of them, the bids of those concerned therein shall be rejected. (70 v. 195, § 55.)

Letting contracts for school houses when cost amounts to \$10,000 or more; see Sec. 794, R. S.

The duty to advertise, etc., when the cost exceeds \$500, is imposed on township boards in their corporate capacity, and cannot be delegated to the local directors of the sub-districts. 38 O. S., 383.

Where the board awarded a contract to build a school house to the lowest responsible bidder for the whole work, but whose bid was defective, in that it did not state the price separately of labor and materials, and the relator's bid for labor and materials was the lowest offered, and yet was defective, in not having a sufficient guarantee, and he had notified the board that his bid was for the whole work or none; Held, that relator must show clear, legal right in himself, and cannot avail himself of defects in the other's bid; that defects may be waived where no public injury is worked thereby; that relator cannot complain that the whole work was awarded to a lower bidder, although his bid for a part was the lowest offered. 42 O. S., 374.

A bid under this section which separately states the labor and material, with the price on each, and with the provision attached that it is to be accepted as a whole, does not comply with this section. 4 N. P., 44.

See 2 C. C., 363, under Sec. 3995.

The discretion of a board as to what system of apparatus it will put in cannot be controlled either by mandamus or injunction. Such bids are not competitive. 14 C. C., 15.

In order that one who has bid on public work can maintain an action of mandamus, he must show that he is the one with whom the contract should be made regardless of anybody's else rights. 14 C. C., 19.

A bid on heating and ventilating apparatus need not separately state the cost of labor and materials entering into the same. *Id.* 23.

When an advertisement for bids for public work is required, the board may reject them. 13 C. C., 603.

When an advertisement is not necessary, the board may make such stipulations as it desires. *Id.*

Sec. 3989. [Erection of school houses in joint subdistricts; transfer of property and sale of realty.] When it becomes [necessary] to rebuild the school house of a joint subdistrict, or for the better accommodation of scholars, to change the school house site and erect a new building therein, the question of such rebuilding, or of such change of site and erection of a new building, shall be determined by a majority vote of the township board of education in which the school house is situate, and in such manner as to secure the better accommodation of a majority of scholars in the same; any funds which may be or have been assessed and collected for the

building of such school house shall be transferred to the custody of the board of education in the township in which the new building is to be erected, which board shall proceed in all matters connected with the erection of the building in accordance with the provisions of this chapter; and if the location is changed to another township, the personal property belonging to such subdistrict shall be transferred to the board of education of such township; and any real property belonging thereto, and situated in the township from which the location is changed, shall be sold by the board of education of such township, and the proceeds of the sale transferred to the board of education of the township to which the location is changed. (89 v. 96; 72 v. 63, § 36.)

See Sec. 3941.

Sec. 3990. [When boards may appropriate property.] When it is necessary to procure or enlarge a school house site, and the board of education and the owner of the proposed site or addition are unable from any cause to agree upon the sale and purchase thereof, the board shall make an accurate plat and description of the parcel of land which it desires for such purpose, and file the same with the probate judge of the proper county; and thereupon the same proceedings of appropriation shall be had which are provided for the appropriation of private property by municipal corporations. (70 v. 195, § 65.)

Appropriation of property; see Sec. 2232, R. S.

Sec. 3991. [When and how question of special tax levy submitted to voters.] When the board of education of any district determines that it is necessary for the proper accommodation of the schools of such district to purchase a site or sites and erect a school house or school houses thereon, or to do either, or when it shall become known to a board of education that the money provided for the purchase of a site or sites and the erection of a school house or school houses is not sufficient therefor, and such board ascertains that the purchase of such site or sites and the erection and furnishing of such school house or school houses, or either, or the completion of a partially built or unfurnished school house or school houses for which a sufficient sum of money has not been provided, will require a greater tax upon the property of such district than the board is authorized by this title to levy, and that to provide means therefor it will be necessary to issue bonds, it shall make an estimate of the probable amount of money required for such purposes, or either of them, and at a general election, or a special election called for that purpose, shall submit to the electors of the district the question of levying taxes for such purposes or either of

Ch. 8.

School Houses and Libraries.

them, and the further questions whether the levy shall be made from year to year thereafter, and what amount shall be levied each year until the actual cost of such site or sites, the erection of such school house or school houses, or completion or furnishing or refurnishing of same or either of them, is raised; and ten days' notice of such submission shall be given by the board by posters put up in five of the most public places in the district, which shall state the time, place and object of the election. (94 v. 38; 91 v. 41; 70 v. 241, § 61.)

Sec. 2834a. The trustees of any township, the board of education of any school district, except in cities of the first class, and the commissioners of any county, for the purpose of extending the time of payment of any indebtedness which, from its limits of taxation, such township, school district, board of education or commissioners, for the best interest of said township, school district or county, shall have power to issue bonds of such township, school district or county, or borrow money, so as to change but not to increase the indebtedness, for such length of time in such amounts, and at such a rate of interest as the said trustees, board of education or commissioners may deem proper, not to exceed six per cent. per annum, payable annually or semi-annually; provided, however, that no indebtedness of any township, school district or county shall be funded, refunded or extended unless such indebtedness shall first be determined to be an existing, valid and binding obligation of any such township, school district or county by a formal resolution of the trustees, board of education or commissioners of any such township, school or county, which resolution shall so state the amount of the existing indebtedness to be funded, refunded or extended, the aggregate amount of bonds to be issued therefor, their number and denomination, the date of their maturity, the rate of interest they shall bear, and the place of payment of principal and interest. And for the payment of the bonds issued under this section, the township trustees, the board of education or commissioners shall levy a tax in addition to the amount otherwise authorized, every year during the period the bonds have to run, sufficient in amount each year to pay the bonds falling due within the year and the accruing interest.

Township districts having a "school of higher grade than the primaries," may levy a tax of ten mills; see Sec. 4009-2.

Conduct of election; see Sec. 2966-1 and notes under Secs. 3909, 3916 and 3917.

See notes to Sec. 3993.

Dayton board of education may levy tax of two-tenths of a mill for manual and training schools for children. 91 v. 865.

When the statute requires that notice shall be given of the matter to be acted on, a failure to insert such matter will render void any act done with respect to the matter not so embraced as required. 18 Maine, 184; 12 Cushing, 294.

Sec. 3992. [If levy approved, board to certify to auditor.] If a majority of the electors at such election vote in favor of levying taxes for such purposes, or either of them, of continuing the levy from year to year thereafter, and for the amount to be levied each year, the board shall certify the levy annually to the county auditor, who shall place the same upon the tax duplicate in the same manner that other taxes certified by such board are required to be placed thereon; and when the district is divided by a county line, the levy shall be certified, collected, and paid in the manner provided in sections *thirty-nine hundred and*

sixty-one and thirty-nine hundred and sixty-two, in the case of levies for joint subdistricts. (70 v. 195, § 62.)

Sec. 3993. [How the levy may be anticipated.] To enable such board to anticipate the money to be so raised it may borrow the sum of money necessary, not exceeding the amount so authorized to be levied, and issue bonds therefor, payable as indicated by the vote provided for in section *thirty-nine hundred and ninety-one*, after a certain day to be named therein, and bearing interest payable semi-annually, at a rate specified therein not exceeding six per centum per annum; the bonds shall be in such sums as the board may determine, be numbered consecutively, made payable to the bearer, bear date the day of sale, and be signed by the board officially; the clerk of the board shall keep a record of the number, date, amount, and rate of interest of each bond sold, the sum for which and the name of the person to whom sold, and the time when payable, which record shall be open to the inspection of the public at all reasonable times; and the bonds so issued shall in no case be sold for a less sum than their par value, nor bear interest until the purchase money for the same shall have been paid by the purchaser. (70 v. 195, § 63.)

Sec. 22b. All bonds issued by boards of county commissioners, boards of education, commissioners of free turnpikes, shall be sold to the highest bidder after being advertised three times, weekly, in a newspaper having a general circulation in the county where the bonds are issued; and if the amount of bonds to be sold exceeds twenty thousand dollars, then in an additional newspaper having a general circulation in the state, three times, weekly. The advertisement shall state the total amount of bonds to be sold, the amount of each bond, how long they are to run, the rate of interest to be paid thereon, whether annually or semi-annually, the law or section of law authorizing their issue, the day, hour and place in the county where they are to be sold. None of said bonds shall be sold for less than the face thereof, with any interest that may have accrued thereon; and the privilege shall be reserved of rejecting all or any bids, and if said bids are rejected said bond shall again be advertised; all moneys arising from premiums on the sale of said bonds as well as the principal, shall be credited to the fund on account of which the bonds are issued and sold.

Toledo board of education subject to the provisions of Sec. 3993; see Sec. 3899-28.

Mandamus is the proper remedy to compel the board to appropriate moneys already in their treasury for that purpose, toward the payment of such bonds, and to levy such tax as may be necessary to complete such payment. 27 O. S., 90.

A board of education agreed to borrow a sum of money at an aggregate rate of interest of fifteen per cent., in manner following: For the amount so to be borrowed, bonds were to be issued bearing the authorized rate of interest, and for the excess of interest, orders on the treasury were to be issued, payable at the same time as the legal interest. The bonds were regularly issued, bearing eight per cent. interest, and sold at par, and the money was received and used as authorized. For the excess of interest, orders on the treasury were at the same time issued and delivered to the purchaser, as agreed to by the parties, but were never presented for payment, and after their maturity, he offered to return them for cancellation: Held, that this agreement to pay excess of interest is void, and, having never been executed in whole or in part, will not avoid a recovery on the bonds. 35 O. S., 519.

Certain bonds were issued by a board of education; they were afterwards redeemed before maturity, and placed in the hands of the treasurer for destruction. The treasurer failed to destroy them, but fraudulently used them as collateral security for an individual loan by an innocent third person: Held, the board was not liable for the payment of the same. 41 O. S., 504.

Sec. 3994. [Issue of bonds by boards of education of city districts of the first class; exceptions.] The board of education of any city district of the first class, except a district embracing a city of the first or second grade of the first class, may issue bonds to obtain or improve public school property, and in anticipation of income from taxes for such purposes, levied or to be levied, may, from time to time, as occasion requires, issue and sell bonds, under the restrictions and bearing a rate of interest specified in the preceding section, and shall pay such bonds and the interest thereon when due, but shall so provide that no greater amount of such bonds shall be issued in any year than would equal the aggregate of a tax at the rate of two mills, for the year next preceding such issue; but the order to issue such bonds shall be made only at a regular meeting of the board, and by a vote of a majority of all the members thereof, taken by yeas and nays, and entered on the journal of the board. (89 v. 257; 75 v. 526, § 56.)

Toledo board of education subject to this section; see Sec. 3899-28.

See act referred to under Sec. 3993.

For registration of bonds, Sec. 2771-20, R. S.

Bonds for additional school building in Cincinnati, 88 v. 395, § 3; Am. in 89 v. 154.

City districts, second grade, first class, may issue school building bonds. 93 v. 459.

An injunction would lie against a board of education which sought to issue bonds in excess of this authority, but only as to such excess, and not to the whole. 47 Mich., 226; 43 Iowa. 48.

Sec. 3994a. [Issue of deficiency bonds by Cleveland board.] That boards of education in city districts of the second grade of the first class shall have power to borrow money not exceeding in amount the sum of three hundred thousand dollars to meet any deficiency that may exist in such funds and revenues as it may have available to pay the current and ordinary expenses of the year A. D. 1892, and to issue bonds therefor bearing interest at a rate not to exceed five per centum per annum. (89 v. 258.)

Sec. 3994b. [Cleveland board may borrow money and issue bonds to extend but not to increase bonded indebtedness.] That boards of education in city districts of the second grade of the first class shall have power to borrow money and to issue bonds therefor, bearing interest at a rate not to exceed six per centum per annum, to extend the time of payment, but not to increase the amount of any of its bonded indebtedness, whenever the same shall become due and payable. (92 v. 431; 89 v. 258.)

93 O. L., 460, repeals 3991b, but undoubtedly 3994b was intended, as there is no section 3991b.

Toledo board of education may exercise the power of this section; see Sec. 3899-28.

Sec. 3994c. [Regulations as to issue of Cleveland bonds.] That all bonds issued by boards of education in city districts of the second grade of the first class shall contain a citation of the law and resolu-

tion authorizing the same, and shall be signed by the school director and the auditor of the board, and shall be drawn to mature within ten years and six months of their date of issue. (89 v. 258.)

Sec. 3994d. [Regulations as to sale of Cleveland bonds.] Whenever any board of education in city districts of the second grade of the first class issues its bonds it shall first offer them at par and accrued interest to the commissioners of the sinking fund of any city located in whole or in part within such district and only after their refusal to take any or all of such bonds at par and interest shall such bonds, or as many of them as remain, be advertised and offered for public sale in manner and form as provided by an act entitled "An act providing for the sale of public bonds," passed March 22, 1883. (80 O. L., 68; 89 v. 258.)

LIBRARIES.

For sections 3995-4006 see S. & C., 1363, 1364.

State library commissioners to give advice and attention to free public library officers; see Sec. 348.

For information relative to traveling libraries, see Appendix.

Committee on teachers and text books of township board of education to recommend additions to school libraries; see Sec. 3920.

Sec. 3995. [Certain boards may appropriate money for library, etc.] In any district the board of education may appropriate money from the contingent fund for the purchase of such books, other than school books, as it may deem suitable for the use and improvement of the scholars and teachers of the district, and in the purchase of philosophical or other apparatus for the demonstration of such branches of education as may be taught in the schools of the district, or for either of such purposes; but not more than one-half of the amount herein authorized to be appropriated shall be expended in the purchase of such apparatus; such appropriations shall not exceed, in any one year, twelve hundred dollars in city districts containing cities of the first grade of the first class, three hundred dollars in other city districts of the first class, one hundred and fifty dollars in city districts of the second class, and seventy-five dollars in other districts; and the books so purchased shall constitute a school library, the control and management of which shall be vested in the board of education. The board of education of any city of the second class, fourth grade, having a free public library, organized in pursuance of law, may allow such free public library association the use and control of the public school library; subject, however to such rules, regulations and restrictions as said board of education may prescribe for the use and control thereof. (1881, April 8: 78 v. 110; Rev. Stat. 1880; 72 v. 29, § 51.)

For the establishment of public library by trustees of township, see sections 1476-1478, R. S. See thirty-seventh paragraph of section 1692 as to libraries in villages and cities.

Ch. 8.

School Houses and Libraries.

A mechanism called "Tellurian Globe," showing the relative motions of the earth and moon and related subjects, is an "apparatus" and not school furnishing, hence the power of the board to purchase them is limited by the amount authorized in Section 3995, and not section 3988. 51 O. S., 199.

Purchase of reading charts of great utility by a school board is under the power of Revised Statutes, section 3987, and is not a purchase of apparatus under section 3995, and therefore not limited in amount by the latter. 2 C. C., 363.

Cabinets containing charts or maps, to be attached to a wall, are not "apparatus" within section 3995. 15 C. C., 565.

Sec. 3996. [Levy for library in cities.] For the purpose of increasing and maintaining the school library of city districts, except in those city districts containing cities of the first grade of the first class, the board of education may levy annually, a tax of one-tenth of one mill on the dollar valuation of the taxable property thereof, to be assessed, collected and paid in the same manner as are other school taxes of such district. (93 v. 191; 64 v. 62, § 1; S. & S. 721.)

Sec. 3997. [How library tax to be expended.] The amount of such tax, when collected, shall be expended, under the direction of the board, for the purchase of such books as are suitable for public school libraries, the bills for which, with the attendant expenses, shall be certified to by the president and clerk, and paid by the treasurer of the school funds. (64 v. 62, § 2; S. & S. 721.)

Sec. 3998. [Board may appoint librarian, etc.] The board, except in city districts containing a city of the first grade of the first class, may appoint a librarian, fix his compensation, and make all needful rules and regulations for the management of the library, to which every family resident in such city district, save as hereinbefore excepted, shall have access. (93 v. 192; 64 v. 62, § 3; S. & S. 721.)

Sec. 3999. [In certain cities board may appoint managers of library.] In cities not having less than twenty thousand inhabitants, the board of education having custody of any public library therein, may, at any regular meeting, adopt a resolution providing for a board of managers of such library, and shall thereupon elect by ballot, two persons to serve as members of such board for a term of three years, two persons to serve for a term of two years, and two persons to serve for a term of one year; and annually thereafter two persons shall be elected to serve for a term of three years; all vacancies in such board shall be filled by the board of education by ballot, and a person so elected shall serve during the unexpired term of his predecessor; the president of the board of education shall be a member of the board of managers, ex officio; and the board of managers shall at all times be amenable to and under the control of the board of education, as to tenure of office and authority, and shall serve without compensation;

[**Board of trustees in Cincinnati; how appointed; terms.**] Provided, that in cities of the first grade of the first class upon the expiration of the terms of office of the trustees of the public library therein, heretofore appointed under this section, as amended April 30, 1891, there shall be appointed as successors to said board, a board of trustees of said library consisting of seven persons, as follows: Two by the board of education of the school district within which such city is situated, two by the board having charge of the high schools of such city, two by the directors of the university in such city, one of each of said appointees shall hold his office for two years, and one for three years; and one by the judges of the court of common pleas of the county within which such city is situated, who shall hold his office for a period of three years; and thereafter said boards and said judges shall, upon the expiration of the terms of office of said appointees, and each three years thereafter, appoint successors to said trustees. The appointee aforesaid of the judges of the court of common pleas shall succeed in said board of trustees the president of the board of education, who theretofore was, by virtue of his said office, a member of said board of trustees, and thereafter the right of such president of said board of education aforesaid of membership in said board of trustees of said library shall cease.

[**Vacancies.**] All vacancies in said board of trustees of said library shall be filled by the respective bodies having the power of appointment. Provided, however, that nothing herein shall be construed in any wise to abridge the term of office or curtail the powers or duties of the trustees of the public library in cities of the first grade of the first class, appointed under this section as amended April 30, 1891, during the terms of office for which they were appointed. (93 v. 192; 88 v. 446; 64 v. 100, § 1; S. & S. 722.)

Sec. 3999a. [**Residents of Hamilton county entitled to use of city library.**] Each and every resident of the county within which is situated any city of the first grade of the first class, having therein established a public library, shall be entitled to the free use of such library, reading rooms and any branch or department of the same, and all the privileges thereof, upon such terms and conditions not inconsistent herewith, as the board of trustees of such library may prescribe. (94 v. 204; 93 v. 193.)

Sec. 3999b. [**Powers of trustees in Cincinnati.**] The board of trustees of the public library in cities of the first grade of the first class shall have sole and exclusive charge, custody and control of the public library in such city, including all property, both real and personal, used and occupied by such library, whether acquired heretofore or hereafter, and shall have full power to make all rules

and regulations necessary for the proper government, maintenance, care and management thereof, and to provide therefor. Said board of trustees shall have power over, and exclusive control of, the library fund hereinafter provided for, and of the expenditure of all moneys collected to the credit thereof. They shall have power and it shall be their duty to establish in said city and throughout the county within which is situated said library, reading rooms, branch libraries and library stations in connection with said library, and to lease and furnish said rooms, buildings or parts thereof as are required for such purposes, and to pay all necessary expenses connected therewith. They shall have power, and it shall be their duty to purchase and pay for all books, periodicals, magazines and other literature and supplies necessary, in their judgment, for said public library, reading rooms, branch libraries and library stations, and to incur the necessary expenditures for the encouragement and advancement of the best use of such library, reading rooms, branch libraries and library stations by the public; all such purchases, payments and expenditures to be made out of said library fund hereinafter provided for.

[**Employment of librarian and assistants.**] They shall have power, and it shall be their duty, to employ a librarian, assistant librarians, and other necessary assistants for such public library, reading rooms, branches and stations, to fix the compensation of persons so employed, and to pay the same out of said library fund. Said library board may fix the term of any such person employed by them for any period not to exceed one year. (93 v. 193.)

Sec. 3999c. [Tax for library purposes in Cincinnati.] For the purpose of increasing, maintaining and managing the public library in cities of the first grade of the first class, for which a board of trustees shall have been appointed, as provided in section 3999, the said board of trustees may levy annually a tax of not exceeding five-tenths of a mill on each dollar of valuation of the taxable property of the county wherein is situated such city, to be assessed, collected and paid in the same manner as are other taxes levied throughout the county. Said levy shall be certified by said board of trustees to the auditor of the county in which said city is situated, and shall be placed by said auditor on the tax duplicate and collected as other taxes. The money realized from said levy, and all moneys received or collected by said trustees for the library, shall be placed in the treasury of said county, subject to the order of said board of trustees of said library. Said fund shall be known as the library fund of said county, of which the county treasurer shall be the custodian, and no money shall be drawn therefrom, except upon the requisition of the board of trustees of said library, certified by the president and secretary of said board, directed to the county auditor, who shall draw his warrant on the

county treasurer therefor. Any part of said funds unexpended during any year shall remain to the credit of said library fund. (94 v. 204; 93 v. 194.)

Sec. 3999d. [Disposition of unexpended fund heretofore raised for library purposes in Cincinnati.] The amount of any fund heretofore raised by a levy or tax by the board of education in such city for school library purposes, and all library funds remaining unexpended, shall be transferred from the respective funds to the library fund herein created, to be expended and paid out as herein provided for funds produced by a levy made by said board of trustees, and any and all funds, bonds, stocks or other species of property held by the board of education of such city, or by any of the departments of such city for the benefit of the public library thereof, shall be transferred to the board of trustees of such public library, to be held and controlled by them subject to the terms of the respective donations. (93 v. 194.)

Sec. 3999e. [Who ineligible as members of the library board.] No member of any of the boards exercising the power of appointment of the trustees of the public library, as provided in section 3999, shall be appointed or elected a member of said library board. (94 v. 204.)

Sec. 4000. [Cleveland public library.] The public library board of the city of Cleveland shall consist of seven suitable persons, residents of said city, no one being a member or officer of the board of education. The members of the library board shall serve without compensation, and hold their offices for three years, and until their successors shall have been elected and qualified, except that at the first election two of the board shall be elected for one year, two for two years, and three for three years. After said first election so many shall be elected each year as equals the number whose term expires that year. They shall be elected by roll-call as in other cases by the board of education of the city of Cleveland, at its first regular meeting after the third Monday of April, 1886, and annually thereafter as hereinbefore provided. The board of education shall have power at any time to fill vacancies in the library board for unexpired terms by election as aforesaid. (1886, April 28: 83 v. 104; 80 v. 172; Rev. Stat. 1880; 75 v. 101, § 1.)

Sec. 4001. [Powers and duties of library board.] Such library board shall report in writing to the board of education once each year, and oftener if required by the latter, shall have exclusive charge and control of the public library of the city, and shall have full power to make all rules and regulations for the government and management thereof; to employ a librarian and such assistants and help as may be needed for the care and protection of the library, and to attend to the drawing

and return of books; but prior to such employment the compensation of such librarian, assistants and help, shall be fixed by the library board, by a majority of the members thereof voting in favor of such compensation, on roll-call by the secretary, and such librarian, assistants and help shall be employed by a vote in the same manner. (1883, April 18: 80 v. 172; 78 v. 132; Rev. Stat. 1880; 76 v. 50, § 2.)

Sec. 4002. [Library tax, and how expended.] For the purpose of increasing and maintaining the public library in said city, and the territory thereto attached for school purposes, such library board may levy annually a tax of six-tenths of one mill on each dollar valuation of the taxable property of the city, and the territory thereto attached for school purposes, to be levied, collected and paid in the same manner as are school taxes of the city; all money appropriated, received or collected by tax for the library, shall be expended under the direction of the library board in purchasing such books, pamphlets, papers, magazines, periodicals, journals and other property as may be deemed suitable for the public library, and in payment of all other charges and expenses, including compensation of the librarian, assistants and help that may be incurred in increasing and maintaining the library, and all claims against said fund shall be approved by the president and secretary of said library board and paid upon the warrant of the auditor of the board of education in the manner now provided by law for the payment of claims against said city. (94 v. 26; 91 v. 268, 123; 90 v. 96; 80 v. 172, 173; Rev. Stat. 1880; 76 v. 50, § 3.)

Part of school tax in Cleveland to be used for library; see Sec. 4002-18.

(4002-1) Sec. 1. [Cleveland library board to hold title and control property.] Said library board, in its own name shall hold the title to and have the custody, management and control of all property of said library board, both real and personal, whether acquired heretofore, or hereafter, and shall have power over, and the executive control of the expenditures of moneys collected for the purpose of purchasing lands, and erecting buildings and also have complete custody, management and control of all public libraries and branches and stations thereof, and the reading-rooms connected therewith. (92 v. 590.)

(4002-2) Sec. 2. [Can purchase, lease or condemn.] Said library board shall have power, by a two-third vote of its members entered upon its journal, to purchase grounds and erect suitable library buildings, and to lease grounds and suitable library buildings, and in case suitable grounds cannot be purchased, to condemn the grounds desired, by virtue of the power of eminent domain, and erect thereon suitable and appropriate buildings for library use. The title to such grounds so purchased or condemned and buildings erected shall be taken to and vest in the said library board. (92 v. 590)

(4002-3) **Sec. 3. [Proceedings to condemn.]** When it is deemed necessary by said library [board] to condemn or appropriate private property, whereon to erect library buildings, said library board in making such appropriation shall proceed in accordance with the provisions of section 2235 and subsequent sections found in chapter 3, division 7, title 12 of the Revised Statutes of Ohio and acts amendatory thereof and supplementary thereto. (92 v. 590.)

(4002-4) **Sec. 4. [Donations.]** Said board may by resolution accept any gift, devise or bequest of property, real and personal, for the benefit of the library. (92 v. 590.)

(4002-5) **Sec. 5. [Exempt from tax and execution.]** All property, real or personal, vested in any public library board shall be exempt from taxation and from sale on execution or other writ or order in the nature of an execution. All conveyances made by such library board shall be executed by the president and secretary thereof. (92 v. 590.)

(4002-6) **Sec. 6. [Oath.]** Each person appointed a member of such board shall, upon entering upon the duties of his office, take an oath, or affirmation, to obey the constitution of the United States and the constitution of the state of Ohio, and that he will faithfully perform the duties of his office. (92 v. 590.)

(4002-7) **Sec. 7. [Organization.]** Said library board at its first meeting in June after the passage of this bill, and annually thereafter in June, shall organize by choosing a president, a vice president and a secretary, and in the absence of the president or his inability to act, the vice president shall perform the duties of the president. (92 v. 590.)

(4002-8) **Sec. 8. [Annual report.]** Said library board shall make an annual report to the board of education stating the condition of their trust, the various sums of money received from the library fund and from other sources and how much moneys have been expended, and for what purposes; the number of books and periodicals on hand; the number added by purchase, gifts or otherwise during the year; the number lost or missing, the number of books loaned out and the general character of the books, with other statistics, information and suggestions as they may deem of general interest. (92 v. 590.)

(4002-9) **Sec. 9. [No member of board to be interested in contract, except; validity of contract.]** No member of such library board shall have any pecuniary interest, either directly or indirectly, in any contract made with the board or be employed in any manner or have any compensation from the board of which he is a member, except as secretary, and no contract shall be binding upon such board unless it be made or authorized to be made at a regular or special meeting of the board. (92 v. 590.)

(4002-10) **Sec. 10. [Use of library and reading room.]** Every library and reading-room established under this act shall be free to the use of the inhabitants of such city and those who reside in the territory thereto attached for school purposes, subject, however, to such rules and regulations as the library board may deem necessary to adopt and publish, to protect and preserve property therein in order to render the use of said library and reading-room of the greatest benefit to the greatest number; and said library board may exclude and cut off from the use of said library and reading-room any and all persons who shall wilfully violate any of such rules and regulations. (92 v. 590.)

(4002-11) **Sec. 11. [Bonds to pay for land and building.]** Said library board may issue bonds with interest coupons attached, to obtain land and building for a public library and to furnish the same and to pay the cost and expense thereof, and in anticipation of income from taxes for such purposes levied or to be levied, may from time to time, as occasion requires, or at any time after the passage of this bill, issue and sell bonds, bearing interest, payable semi-annually, at a rate specified therein, not exceeding five per cent. (5%) per annum, and in such sums and at such times as the library board may determine, which bonds shall be numbered consecutively, made payable to the bearer and be signed by the president and secretary of the board and denominated "public library bonds of the city of Cleveland, Ohio," and the secretary of said board shall keep a record of the number, date, amount and rate of interest on each bond sold, the sum for which and the name of the person to whom sold, and the time when payable, which record shall be open to the inspection of the public at all reasonable times, and the bonds so issued shall in no case be sold for a less sum than the par value nor bear interest until the purchase money for the same shall have been paid by the purchaser and such library board shall pay such bonds and the interest thereon when due, provided that the total issue of bonds shall not exceed two hundred and fifty thousand dollars (\$250,000). (92 v. 590.)

(4002-12) **Sec. 12. [Resolution to issue; sale of.]** The order to issue such bonds shall be made only at a regular meeting of such board and by a vote of five-sevenths of all the members thereof, taken by yeas and nays and entered on the journal of the board, and such bonds shall be sold to the highest bidder after being advertised once a week for four (4) consecutive weeks in a newspaper having a general circulation in the county where such bonds are issued, and if there shall be more than one newspaper in such city having a general circulation in the county where such bonds are issued, then the sale of such bonds shall be advertised in at least one additional newspaper of such general circulation in such county; the advertisement shall state the total number of bonds to be sold, the amount of each, how long they are to run, the rate of interest

to be paid thereon, whether annually or semi-annually, the law or section of law authorizing their issue, day, hour and place in the county where they are to be sold, and the privilege shall be reserved by such board to reject all or any bids, and if said bids are rejected said bonds shall be advertised and the moneys arising on premiums of the sale of said bonds as well as the principal shall be credited to said fund on account of which the bonds are issued and sold and shall be used for the purpose provided in this section. (92 v. 590.)

(4002-13) **Sec. 13. [Sinking fund.]** For the purpose of creating a sinking fund for the extinguishment of the bonds provided for in the preceding section, said library board may annually until the payments of the bonds are fully provided for, levy and collect a tax in addition to other taxes now authorized to be levied by it, which shall not exceed two-tenths of one mill upon the taxable property of the city of Cleveland and the territory thereto attached for school purposes, which tax shall be paid into the treasury of said city and on order of the director of accounts of said city paid over to the sinking fund commission hereafter provided for and by them applied, by order of the library board to the extinguishment of the bonds in the preceding section provided and to no other purpose whatever, and the taxes so levied shall be certified and placed on the tax list and collected in the same manner as school taxes of said city and such tax shall be a lien upon the property whereon they are assessed and the same as state and county taxes and subject to the same penalties if delinquent. (92 v. 590.)

(4002-14) **Sec. 14. [Trustees of sinking fund.]** In such city there shall be a board designated as "the trustees of the library sinking fund of the city of Cleveland" composed of three (3) citizens thereof, to be appointed by the court of common pleas in the county in which such city is situated. The first appointment shall be one for the term of one year, one for the term of two years, and one for the term of three years, and all trustees appointed thereafter shall serve for three years, except in case of vacancy, which shall be filled by said court for the unexpired term, and before any person appointed as a member of such board shall assume the duties of his office he shall give bond to the state of Ohio in the sum of five thousand dollars (\$5,000) with not less than two sureties, to faithfully discharge his said duties. (92 v. 590.)

(4002-15) **Sec. 15. [Their organization.]** Such trustees immediately after appointment and qualification shall organize by appointing one of their number as president and the director of accounts of such city shall act as secretary of said board of trustees and the library board shall provide such trustees with a place of meeting, and regular meetings of such trustees shall be held on the second Monday of January and July of each year, but other meetings may

be called by the president or any member of the board. Their proceedings shall be recorded in a journal kept for that purpose which shall at all times be open to the inspection of the library board or any member thereof and all questions relating to the purchase or sale of securities, payment of bonds or interest shall be decided by a viva voce vote with the name of each member voting recorded on the journal and no question shall be decided unless approved by a majority of the whole board. (92 v. 590.)

(4002-16) **Sec. 16.** [Their duty to certify tax.] The trustees of such sinking fund shall in the month of May in each year and oftener, if required, certify to the library board the rate of tax, not exceeding the limit herein provided, necessary to provide a sinking fund for the payment of the bonds issued by authority of this bill together with the amount necessary to be levied to provide for the payment of the interest thereon, and the library board shall levy the amount so certified as under this act provided and for the full amount so certified, but said library board may increase the amount so reported, provided the total amount so levied does not exceed the limitation provided in this bill. (92 v. 590.)

(4002-17) **Sec. 17.** [Investments by.] The trustees of such sinking fund shall invest all moneys received by them in bonds of the United States, state of Ohio, city of Cleveland, city of Cincinnati, city of Columbus, and the city of Toledo, and they shall give preference to the bonds of the city of Cleveland, where they can be purchased at a price equal to, or, less than the bonds of the United States, or of the state of Ohio, taking into consideration the rate of interest paid on each, and the interest received shall be reinvested in like manner and at no time shall there be more than \$5,000 kept on deposit if investment can be made, and said trustees shall provide for the payment of all interest on said bonds herein authorized to be issued, together with the principal thereof at maturity of said bonds, from said funds so invested by them. (92 v. 590.)

(4002-18) **Sec. 1.** [Cleveland may appropriate from school fund for library.] In all cities, which, by the last federal census, had, and all those which hereafter, on the first day of March, in any year, as ascertained by any federal census, may have, a population exceeding ninety thousand and less than two hundred thousand inhabitants, it shall be lawful to appropriate from the school fund, an amount equal to the proceeds of one-tenth of one mill of the tax levy, to maintain or assist in maintaining the public library and pay in part the cost and expense of supporting and running any public library in said cities in addition to the one-tenth of one mill now authorized by law to be reased by taxation for that purpose; provided, that this act shall not be construed to authorize any increase in levies for school purposes, including libraries in said cities, over that made in 1877. (75 v. 11.)

IN TOLEDO.

(4002-19) **Sec. 1.** [Toledo public library; tax for library.] In any city of the third grade of the first class, the city council may, by a resolution passed by a majority of the members elected thereto, declare it to be essential to the interests of such city, to establish and maintain therein a public library and reading room. That thereafter the said city council shall, annually, levy a tax of thirty-five one-hundredths (35-100) of one mill on the dollar on the taxable property of such city for that purpose, to be called the library fund; and which levy shall be certified to the county auditor of the county, and by him placed on the tax duplicate of the county and collected as other taxes. (94 v. 166; 1888, April 12; 85 v. 209; Rev. Stat. 1880; 70 v. 142.)

(4002-20) **Sec. 1a.** (Repealed April 14, 1900. 94 v. 166.)

(4002-21) **Sec. 2.** [Board of trustees.] The custody and management of such public library and reading-room, as well as its entire administration, shall be committed to a board of trustees, nine in number, of whom the mayor of such city for the time being shall be one, and the others shall be appointed by the common council, four of whom shall be appointed from such names as shall be nominated to the common council by the board of education of said city, and shall be citizens of approved learning, discretion, and fitness for such office. They shall hold their office for the term of four years, and until their successors are duly elected and qualified; provided, that the trustees first appointed, other than the mayor, shall be elected respectively for terms of one, two, three, and four years, from the first day of January next following their election, two for each term. Any vacancy caused by the death, resignation, or removal of a trustee, or otherwise, shall be filled for his unexpired term by appointment of the common council. No trustees shall have compensation as such. (1888, April 12; 85 v. 209, 210; Rev. Stat. 1880; 70 v. 142.)

(4002-22) **Sec. 3.** [Transfer of libraries to such board by the board of education.] As soon as said board of trustees shall be elected and organized, it shall be the duty of the board of education in such city to transfer to the custody and control of such board of trustees whatever public library or libraries may be in its possession or control, except such books of reference, maps or charts as the board of education may think proper to retain for use in school buildings; and thereafter no tax shall be levied by such board of education for a library fund. (1888, April 12; 85 v. 209, 210; Rev. Stat. 1880; 70 v. 142.)

(4002-23) **Sec. 4.** [Organization of trustees; regulations; powers; deposit of library funds; warrants; power to purchase or condemn

grounds; issue and sale of public library building bonds; payment of said bonds and interest; title to grounds purchased; librarians and assistants.] Said trustees shall immediately after their appointment, meet and organize by the election of one of their number as president, and by the election of such other officers as they may deem necessary. They shall make and adopt such by-laws, rules and regulations for their own government and guidance of the library, reading room and employes as may be expedient and not inconsistent with this act. They shall have power over and the exclusive control of the expenditure of all moneys collected to credit of the library fund, and of the supervision, care, custody and control of the grounds and buildings constructed for such purpose, or rooms leased or set apart for such purpose; provided, that all moneys collected for such library, including proceeds of the bonds herein authorized, and all others, shall be deposited in the treasury of said city to the credit of the library fund, and shall be kept separate and apart from other funds, and the city auditor shall issue his warrant when drawn upon by said board of trustees, or by its proper officers duly authorized. Said board shall have the power, by a two-third vote of said trustees entered upon its journal, to purchase grounds, and in case suitable grounds cannot be purchased, to condemn the grounds desired, and erect thereon suitable and appropriate building or buildings for the use of said library; the cost of such ground and buildings not to exceed in the aggregate the sum of \$45,000; and for such purpose said board is authorized and empowered to borrow money upon bonds as hereinafter provided to pay for the same, not to exceed in the aggregate, the sum of \$45,000; and the said boards of trustees is authorized to issue and sell its bonds, for the above named amount, with coupons for interest, divided into and payable in fifteen consecutive annual payments; the first of which shall become due three years after their issue. Said bonds shall be denominated "The Public Library Building Bonds" of said city, and shall be for the sum of \$500 each, payable to bearer, and bear interest at the rate not exceeding four and one-half per cent. per annum, payable semi-annually. Said bonds and coupons shall be signed by the president of said board and attested by its secretary; and in making sale of said bonds the said board of trustees shall be governed by the provisions of an act of the general assembly passed March 22, 1883 (O. L., vol. 80, p. 68), entitled "an act providing for the sale of public bonds." To meet the payment of said bonds and interest, the said board of trustees shall appropriate and set apart annually from said library fund, a sum sufficient for such purpose, not to exceed one-half of the tax revenues collected for such year. The title to such grounds so purchased shall be taken to and vest

in the trustees of the public library of such city; said trustees shall be held and considered to be special trustees thereof for such city. Said board shall have power to appoint suitable librarians and necessary assistants, fix salaries of same, and shall, in general, carry out the spirit and intent of this act in establishing and maintaining the best public library and reading-room with the means at their disposal. (1888, April 12: 85 v. 209, 210; Rev. Stat. 1880; 70 v. 142.)

(4002-24) Sec. 4a. [Additional bonds authorized to be issued for certain purposes.] For the purpose of enabling said board of trustees to construct said building or buildings so as to make it or them fire-proof, and thereby insure protection to the large and valuable library to be kept therein, and to pay the increased cost of such construction, and complete said building or buildings, and provide necessary furniture for same, and to pay for grading the library grounds and constructing walks, said board of trustees is hereby authorized to issue and sell additional bonds to an amount not in excess of thirty-five thousand dollars (\$35,000); said additional bonds shall bear interest, be issued, sold, the proceeds deposited, drawn, used, and the interest and principal paid, as provided, and subject in all respects to all the conditions named in said original section 4, for the bonds therein authorized, except as follows: the bonds hereby authorized, shall mature, three thousand dollars (\$3,000.00) July 1, 1890; five thousand dollars (\$5,000.00) July 1, 1906; and five thousand dollars (\$5,000.00) July 1, of each succeeding year until July 1, 1911, when seven thousand dollars (\$7,000.00) shall mature, but if it be found unnecessary to issue all of said bonds, those not issued shall be those last to mature as aforesaid; and the rate of interest shall not exceed four per cent. on those bonds to mature July 1, 1906 and thereafter; and said board shall annually appropriate and set apart such additional sum as may be necessary to pay said bonds and the interest thereon as the same mature. (1889, March 12: 86 v. 79.)

(4002-25) Sec. 4b. [Purchase of a site for library.] That on the request of said board by a two-thirds vote of all of the trustees, entered on its journal, any such city of the third grade of the first class, may purchase, appropriate, enter upon and hold, any real estate within its limits, by it deemed necessary for the purpose of providing said public library with suitable library grounds and extensions or additions thereto. The cost and expense of acquiring such grounds, extensions or additions shall be paid for by the trustees of such public library, out of any moneys in its hands or due and owing to it from the public library fund. (88 v. 92.)

(4002-26) Sec. 4c. [Appropriation of private property.] That when it is deemed necessary by any such city of the third grade of

the first class to appropriate private property as heretofore provided in said supplementary section 4*b*, any such city shall proceed in making such appropriation under and in accordance with the provisions of section 2235 and the subsequent sections thereto as found in chapter 3, division 7, title 12 of the Revised Statutes of this state, in so far as the same are applicable. (88 v. 335.)

(4002-27) **Sec. 4*d*.** [Additional building bonds.] For the purposes specified in said original section four (4) and the first section supplemental thereto, section 4*a*, and to complete the carrying out of such purposes, and paying therefor, said board of trustees is hereby authorized to issue and sell additional bonds to an amount not in excess of five thousand dollars (\$5,000.00); and such additional bonds shall be issued and sold and their proceeds disposed of and their payment including interest provided for, in all respects in the same manner and subject to the same conditions, as provided in said supplemental section 4*a* for the bonds to mature July 1, 1906, and thereafter, except that those hereby authorized shall mature July 1, 1912. (89 v. 419.)

(4002-28) **Sec. 5.** [Library to be free, subject to reasonable rules.] Every library and reading-room established under this act, shall be and remain forever free to the use of the inhabitants of such city, subject, however, to such reasonable rules and regulations as the library board may find and deem necessary to adopt and publish, to protect and preserve the property therein, in order to render the use of said library and reading-room of the greatest benefit to the greatest number; and said board may exclude and cut off from the use of said library and reading-room, any and all persons who shall wilfully violate any of such rules and regulations. (1888, April 12: 85 v. 209, 211; Rev. Stat. 1880; 70 v. 142.)

(4002-29) **Sec. 6.** [Annual report to city council.] The said board of trustees shall make an annual report to the city council, stating the condition of their trust, the various sums of money received from the library fund, and from other sources, and how much moneys have been expended, and for what purpose; the number of books and periodicals on hand; the number added by purchases, gifts or otherwise during the year; the number lost or missing, the number of books loaned out, and the general character and kind of such books, with other statistics, information and suggestions as they may deem of general interest. (1888, April 12: 85 v. 209, 211; Rev. Stat. 1880; 70 v. 142.)

(4002-30) **Sec. 7.** [Penalty for injuring library property.] The city council of such city shall have power to pass ordinances imposing suitable penalties for the punishment of any and all persons committing

injury upon such library buildings, grounds or other property thereof. (1888, April 12: 85 v. 209, 211; Rev. Stat. 1880; 70 v. 142.)

(4002-31) Sec. 8. [Power of trustees to accept donations, etc.] Any person or persons desiring to make, devise or bequest, donation or gift of either books, personal property, money or real estate, to and for the use and benefit of such library, may vest the same or title thereto in the said trustees created under this act; to be held and controlled by said board, its successors, when accepted, according to the terms of such devise, bequest or deed of gift of such property; and as to such property the said board of trustees shall be held and considered special trustees thereof. (1888, April 12: 85 v. 209, 212; Rev. Stat. 1880; 70 v. 142.)

IN DAYTON.

(4002-32) Sec. 1. [Dayton public library board; election of.] In any city of the second grade of the second class the city board of education may elect by ballot, a special board of six competent persons, residents and electors of said city or school district, to be called the library board, which board shall have the sole custody, control and management of the public library of such city and of any reading rooms, branch libraries or library stations by said library board established in connection with such public library. (89 v. 229; 84 v. 171.)

(4002-33) Sec. 2. [Political composition of; terms; vote required to elect.] The six members of said library board shall be selected equally from the two political parties having the largest representation in the city board of education and shall be elected as follows: Two for a term of one year, two for a term of two years and two for a term of three years, one member from each of said political parties to be elected for each of said several terms; and at the end of the first year and of each year thereafter, two members of said library board, one from each of said political parties, shall be elected, by ballot, by said board of education for the term of three years. It shall require the affirmative vote of a majority of all the members elected to said board of education to elect the members of said library board. (89 v. 229; 84 v. 171.)

(4002-34) Sec. 3. [Powers and duties.] Said library board shall have power over and the exclusive control of the library fund hereinafter provided for, and of the expenditure of all moneys collected to the credit thereof. They shall have power to establish in said city reading rooms, branch libraries and library stations in connection with such public library, and to lease and furnish such rooms, buildings or parts thereof as are required for such purposes, and to pay all necessary expenses connected therewith. They shall have power and it shall be their

duty to purchase and pay for all books, periodicals, magazines and other literature, and supplies necessary, in their judgment, for said public library, reading rooms, branch libraries and library stations, and to incur the necessary expenditures for the encouragement and advancement of the best use of such public library, reading rooms, branches and stations, by the public; all of such purchases, payments and expenditures to be made out of said library fund hereinafter provided for. They shall have power and it shall be their duty to employ a librarian, assistant librarians, janitors and other necessary assistants for such public library, reading rooms, branches and stations, to fix the compensation of persons so employed and to pay same out of said library fund. Said library board may fix the term of any such persons employed by them for any period not to exceed one year. (89 v. 229; 84 v. 171.)

(4002-35) Sec. 4. [Expenses of library for ensuing year.] Said library board shall, annually, prior to the annual levy of taxes made by the city board of education, report and certify to such city board of education a statement of the amount by said library board deemed necessary for the expenses and expenditures of such library board for the ensuing fiscal year; and said city board of education shall annually levy a tax for such library purposes and for the use of such library board for such purposes for such ensuing year to the full amount so reported and certified by said library board; provided, however, that the amount so levied shall not exceed the amount hereinafter authorized to be levied for such purposes. The fiscal year of said library board shall be the same as that of the board of education. (89 v. 229; 84 v. 171.)

(4002-36) Sec. 5. [Tax for library fund; custodian; disbursements and balance.] The board of education of such city wherein a library board exists under the act to which this act is amendatory or shall hereafter be elected under this act, shall have the power and it shall be the duty of such board of education to levy annually for such public library purposes a tax not exceeding three-tenths of one mill on the dollar of the city valuation, to be called the library fund, which levy shall be certified by said board of education to the county auditor of the county in which said city is situate, within the time and in the manner fixed for the certifying of other levies made by said board of education; and which levy shall be by said auditor placed on the tax duplicate of the county and collected as other taxes. Such levy for library purposes shall not be a part of the general levy authorized to be made by such board of education for school purposes. All moneys collected for such library fund shall be deposited in the county treasury to the credit of said fund and shall be kept separate and apart from other funds, and the county treasurer shall be the treasurer of said fund; and such county treasurer



shall pay out said fund upon orders drawn thereupon and to him directed by said library board or by its proper officers duly authorized by said library board. Any part of said fund unexpended during any year shall remain to the credit of said library fund. (89 v. 229; 84 v. 171.)

(4002-37) **Sec. 6. [Provisions governing board.]** Said library board shall, immediately after their election, meet and organize by the election of a president, a secretary and other necessary officers from their number, and such election shall be held annually thereafter. Said board shall make and adopt such by-laws, rules and regulations for their own government and guidance and for the government and guidance of the public library, reading rooms, branch libraries, and stations, and of the employes of said board as may be expedient and not inconsistent with this act, and said board shall, by their by-laws, designate the officers authorized to draw orders upon said library fund. Any public library now established in any such city and which is maintained and in operation under and by virtue of the provisions of the act to which this act is amendatory, and the existing library board of such city and the officers thereof, shall be governed by the provisions of this act; and such library board shall succeed to and be vested with all the rights, powers and privileges, and charged with all the duties herein granted or imposed; and the members of such existing library board elected thereto by the board of education prior to the taking effect of this act shall continue as such until the expiration of their present terms, and their successors shall be elected pursuant to the provisions hereof. The present officers of such existing library board shall continue in office until the expiration of their present terms as such officers or until a vacancy occurs therein prior to such expiration when their successors shall be elected pursuant to the provisions hereof. Where such existing library board has heretofore reported to such board of education their estimate of the expenses of such library for the current year, pursuant to the provisions of the act to which this act is amendatory, such board of education shall forthwith, upon the taking effect of this act, set apart and pay over to the said county treasurer as the treasurer of such library fund the unexpended balance of the appropriation heretofore made by such board of education for such library expenses for the current year, which balance shall become and constitute a part of said library fund hereinbefore provided for and shall be expended by said library board for the maintenance, management and expenses of such public library, reading rooms, branch libraries and library stations, for the remainder of such current year. (89 v. 229; 84 v. 171.)

(4002-38) **Sec. 1. [Museum may be established.]** In any city of the second grade of the second class, wherein there now is or shall hereafter be a public library of such city, under the control, custody and

management of a library board established pursuant to the provisions of an act entitled "An act to provide for competent and non-partisan public library boards in cities of the second class, second grade," passed March 21, 1887 (O. L., v. 84, p. 171), and of acts amendatory thereto, such library board shall have the power, and is hereby authorized to establish and maintain, in connection with such public library, a public museum for the benefit of the public of such city; and such board may appropriate and expend, out of the amount of the tax levy heretofore or hereafter annually made for library purposes and for the use of such board, such amounts as are in their judgment necessary for the establishment and maintenance of such public museum. Such library board is empowered to receive, by way of gift, loan or purchase, specimens and collections for such museum, to be accepted and held by such board and their successors in office, in trust for museum purposes, and under such conditions and regulations as they may from time to time establish. Such library board may make, from the funds arising from such tax levy, such purchases of specimens and collections for such museum, as shall not impair the proper and sufficient use of such funds for library purposes. (90 L. L., 377.)

IN SMALLER CITIES AND VILLAGES.

Massillon — May issue public library bonds. 93 v. 521.

Massillon — may levy a tax for maintenance of free public libraries. 93 v. 508.

(4002-39) Sec. 1. [Certain cities and villages may have libraries; tax.] The common council of every city not exceeding in population thirty thousand inhabitants, and of every incorporated village shall have power to establish and maintain a public library and reading room, and for such purpose may annually levy and cause to be collected, as other general taxes are, a tax not exceeding one mill on each dollar of the taxable property of such city or village, to constitute the library fund, which shall be kept by the treasurer separate and apart from other money of the city or village, and be used exclusively for the purchase of books, periodicals, necessary furniture and fixtures and whatever is required for the proper maintenance of such library and reading room. (89 v. 98.)

(4002-40) Sec. 2. [Directors.] For the government of such library and reading room there shall be a board of six directors, appointed by the council of such city or village from among the citizens thereof at large, and not more than one member of the council of such city or village shall at any one time be a member of said board. Such directors shall hold their office for three years from the date of appointment, and until their successors are appointed, but upon their first appointment they shall divide themselves at their first meeting by lot into three classes, one-third for one year, one-third for two

years, and one-third for three years, and their terms shall expire accordingly. All vacancies shall be immediately reported by the directors to the proper council, and be filled by appointment in like manner; and if an unexpired term, for the residue of the term only. No compensation whatever shall be paid or allowed to any director. (89 v. 98.)

Board of control in Hamilton successor of free public library trustees. exercises powers of; see Sec. 1545-290, R. S.

(4002-41) Sec. 3. [Organization; by-laws, etc.; control of expenditures; custody of building; how money drawn from treasury; librarian and assistants.] Said directors shall, immediately after their appointment, meet and organize by the election of one of their number president, and by the election of such other officers as they may deem necessary. They shall make and adopt such by-laws, rules and regulations for their own guidance, and for the government of the library and reading room, as may be expedient. They shall have the exclusive control of the expenditures of all moneys collected for the library fund, and the supervision, care and custody of the rooms or buildings constructed, leased or set apart for that purpose, and such money shall be drawn from the treasury by the proper officers, upon the properly authenticated voucher of the board of directors, without otherwise being audited. They may, with the approval of the common council, lease and occupy, or purchase, or erect on purchased ground, an appropriate building, provided that no more than half the income in any one year can be set apart in said year for such purchase or building. They may appoint a librarian and assistants, and prescribe rules for their conduct. (89 v. 98.)

(4002-42) Sec. 4. [Who may use library.] Every library and reading room established under this chapter shall be forever free for the use of the inhabitants of the city or village where located, always subject to such reasonable rules and regulations as the library board may find necessary to adopt and publish in order to render the use of said library and reading room of the greatest benefit to the greatest number; and they may exclude and cut off from the use of said library and reading room any and all persons who shall wilfully violate such rules. (89 v. 98.)

(4002-43) Sec. 5. [Annual report.] The said board of directors shall make an annual report to such council, stating the condition of their trust — the various sums of money received from the library fund, and from all other sources, and how much has been expended; the number of books and periodicals on hand; the number added by purchase, gift or otherwise during the year; the number lost or missing, the number of books loaned out, and the general character and kind of such books,

with such other statistics, information and suggestions as they may deem of general interest. (89 v. 98.)

(4002-44) Sec. 6. [Donations.] All persons desirous of making donations of money, personal property or real estate, for the benefit of such library, shall have the right to vest the title of the same in the board of directors created under this law, to be held and controlled by said board, when accepted according to the terms of the deed of gift, devise or bequest of such property, and as to such property the said board shall be held and considered to be special trustees. (89 v. 98.)

(4002-45) Sec. 7. [Tax to assist existing library association.] In case a free public library has already been established in any city or incorporated village, and duly incorporated and organized, the council may levy a tax for its support as provided in this act, without change in the organization of such library association, and the sum so raised shall be paid to the officer or officers duly authorized to receive the same, and shall be under the control of the said library association; provided, that if at any time such library association ceases to exist or from any reason fails to provide a free circulating library as required by the provisions of this act, the books and other property accumulated from the proceeds of the levy herein authorized shall become the property of the city or village and be subject to the control of the council as herein provided. (89 v. 98.)

(4002-46) Sec. 1. [Library association in cities of four grade, second class; levy.] In any city of the fourth grade of the second class, and in which city there is established and maintained by a public library association duly incorporated, but not organized for profit, a public library, free to all the inhabitants of such city, the board of education shall levy or cause to be levied an annual tax, in addition if need be to the annual amount of taxes limited by law for school purposes, of not less than three-tenths and not to exceed five-tenths of a mill on all the taxable property within such city and school district, to be called "a public library fund," which shall be certified to the county auditor of the county and placed on the tax duplicate of the county, and collected as other taxes. (93 v. 8.)

(4002-47) Sec. 2. [Disposition of tax.] Said tax when so levied and collected shall be paid over by the treasurer of the board of education to the treasurer of said library association, to be used only in the purchase of books, pamphlets, magazines or newspapers, and for general library expenses of said library association. (93 v. 8.)

(4002-48) Sec. 3. [Association to render account.] Said board of education shall require said library association to render an account as often as it shall deem proper of all taxes so received by it, and how the same have been expended,

[Power to levy tax.] And power to levy a tax under this act shall continue only so long as said association shall keep up and maintain in a public place in such city a public library free to all the inhabitants thereof and to all persons residing within said school district. (93 v. 9.)

(4002-49) Sec. 4. [Tax in lieu of other taxes.] The tax so levied shall be in lieu of all other taxes levied for school library purposes, and no other levy shall be made for such purpose;

[Purchase of school apparatus; levy.] Provided, however, that nothing herein shall prohibit the board of education from purchasing all necessary philosophical or other apparatus for the schools and making necessary levies therefor. (93 v. 9.)

Sec. 4003. [Consolidation of libraries in Portsmouth authorized.] In all cities which at the last federal census had, or at any subsequent federal census may have, a population of ten thousand five hundred and ninety-two, it shall be lawful to merge any public library therein heretofore established with any other library or reading room therein existing; but the library formed by such consolidation shall be kept open for the use of the public at all reasonable hours. (75 v. 541, § 1; 76 v. 97, § 1.)

Sec. 4004. [Board of Portsmouth to appoint library committee.] The board of education of every such city shall, at its first regular meeting after the second Monday in June, 1879, elect by ballot three suitable persons, residents of the city, but other than members of such board, who shall be known as the library committee of the city, one to serve for one year, one for two years, and one for three years, and until their successors are duly elected and qualified, and shall, annually thereafter, elect in like manner one person with the same qualifications to serve for three years, and until his successor is elected and qualified; and any vacancy in such committee shall be filled for the unexpired term at the first regular meeting of the board held after the same occurs. (75 v. 541, § 2; 76 v. 91, § 2.)

Sec. 4005. [Powers and duties of such committee.] Such committee shall report in writing to the board of education at least once each year, and oftener if required by the board, and shall have entire charge and control of the school library in the city, with full power to make all rules and regulations for the government and regulation thereof, to employ a librarian, and such assistants and help as may be needed for its care and protection, and to require of the librarian such bond as they may deem proper for the faithful performance of his duties, and to attend to the drawing and return of books; but the salary of such librarian, and the rate of compensation of such assistants and help, shall be fixed by resolution prior to such employment. (76 v. 97, § 3.)

Sec. 4006. [Powers and duties of library committees in Portsmouth.] For the purpose of increasing and maintaining school li-

braries in cities mentioned in section four thousand and three of the Revised Statutes of Ohio, and the territory thereto attached for school purposes, such library committee in such cities is authorized to annually levy a tax of three-tenths of one mill on the dollar valuation of the taxable property of such cities aforesaid, and the territory thereto attached for school purposes, to be assessed, collected and paid in the same manner as are the school taxes of such cities, and all money appropriated or collected by tax for such library shall be expended under the direction of said library committee in the purchase of such books, pamphlets, papers, magazines, periodicals and journals, as may be deemed suitable for the public school library, and in payment of all other costs and charges, including the salaries of the librarian and assistants, that may be incurred in maintaining said libraries, the bills and payrolls for which said expenditures, shall, upon the order of the library committee, be certified by the chairman and secretary of such committee, and paid by the treasurer of the board of education of said city from such library fund. (92 v. 309; 78 v. 176; Rev. Stat. 1880; 75 v. 541, § 2; 76 v. 97, § 4.)

Findlay public library act. 85 v. 546.

Cities of the second class, third grade, except third grade *a*, or any city having by the census of 1890 a population of 27,000 to 34,000, may issue bonds for a public library after submission to vote; passed March 30, 1896. 92 v. 108.

Youngstown — Annual tax for its free public library. 87 v. 105.

Canton — Bonds for free public library; passed April 14, 1896. 83 v. 79.

Ironton — Public library, established in. 90 L. L., 311.

Logan (village) — Public library established. 92 v. 693.

CHAPTER 9.

SCHOOLS AND ATTENDANCE ENFORCED.

SECTION.

4007. Sufficient schools must be provided.
 4008. (Repealed.)
 4009. Boards of education may establish schools of higher grade than primary.
 4009-1. Township boards may establish high schools.
 4009-2. Estimate of funds needed.
 4009-3. Public day schools for deaf children in city districts of first and second grades, first class.
 4009-4. Annual report by board of education.
 4009-5. Annual apportionment and payment by state treasurer to treasurer of such board of education.
 4009-6. Fund.
 4009-7. Car fare of deaf children paid by board.
 4009-8. Schools controlled by what laws.
 4009-9. Day schools for deaf children.
 4009-10. Annual and other reports by board of education.
 4009-11. Annual payment to treasurer of school board by county treasurer.
 4009-12. Payments to be made by county treasurer.
 4009-13. Teachers appointed by school commissioner; removal; qualifications.
 4009-14. Inspection.
 4009-15. Township or joint township high school districts; petition for establishment; duty of township board of education; election for submission of question; form of ballot; counting of ballots and return of election.
 4009-16. Levy certified to auditor who shall place same on duplicate for collection; townships divided by county line; how levy certified and collected.
 4009-17. Purchase or renting of suitable building; when question of levy not to be submitted.
 4009-18. Employment of teachers; assistant teachers.
 4009-19. When sub-district school may be discontinued.
 4009-20. Laws governing such school districts.
 4009a. Schools of higher grade in townships.
 4009b. Vote on union of districts for high school purposes; appointment of board of education for high school.
 4010. Schools at childrens homes, orphans' asylums, and infirmary; how sustained; to be under control of trustees of institution.
 4011. Youth may be sent to charity school at Zanesville.

SECTION.

4012. Evening schools.
 4012a. Attendance by person more than twenty-one years old.
 4013. Who may be admitted to, free; non-resident pupils; crediting of school tax on tuition; assignment of pupils.
 4014. Suspension and expulsion of pupils.
 4015. Dismissal of school on holidays.
 4016. School year, month, and week.
 4017. Board to control schools and appoint officers; salaries; terms; election of teachers in sub-districts; certificate of election filed; reference to standing committee; report of committee; confirmation; failure to confirm; dismissals.
 4017a. Employment of teacher in music; appliances and books furnished.
 4018. Unlawful employment by township board; certificate; payment.
 4019. Teachers dismissed for insufficient cause may institute suit.
 4020. (Repealed.)
 4020a. (Repealed.)
 4020b. (Repealed.)
 4020c. (Repealed.)
 4020d. (Repealed.)
 4020-1. (Superseded.)
 4020-2. (Superseded.)
 4020-3. (Superseded.)
 4020-4. (Superseded.)
 4020-5. (Superseded.)
 4020-6. (Superseded.)
 4020-7. (Superseded.)
 4020-8. (Superseded.)
 4020-9. (Superseded.)
 4020-10. Filing and preservation of copies and prices of school books.
 4020-11. Maximum price; notification of publisher.
 4020-12. Notice to boards; legality dependent.
 4020-13. Procedure upon violation of agreement by publisher.
 4020-14. Studies, etc.; shipment of books, etc.; sale to pupils; purchase from pupils; free books.
 4020-15. Purchase of Howe's Historical Collections of Ohio for schools; payment.
 4020-16. Care and preservation of books.
 4020-17. Physical culture in schools; where.
 4020-18. Cleveland; providing for the manual training of school children in public or private schools.
 4020-19. Manual or domestic training schools in Cleveland.
 4020-20. Certificates of indebtedness.

Ch. 9.

Schools and Attendance Enforced.

SECTION.

- 4020-21. Columbus; levy for establishment of manual training schools.
- 4020-22. Issue of bonds.
- 4020-23. Instruction in the effects of alcoholic drinks and other narcotics; made a regular branch of study.
- 4020-24. Instruction required in teachers' institutes and teachers' training schools; teacher's certificate must contain; enforcement of law.
- 4020-25. Penalty for failure to enforce law; jurisdiction of courts.
4021. When German language to be taught, etc.
4022. Pupils may be sent from one district to another.
- 4022a. Attendance at nearest school; expense per capita.
- 4022-1. In what branches children must be taught; necessary time of attendance; excuse; appeal in case of refusal to excuse.
- 4022-2. Employment of children under age of fourteen years; penalty.
- 4022-3. Half day attendance of minors in certain cases; employment of such minors; penalty; private instruction of such minors.
- 4022-4. Juvenile disorderly persons.
- 4022-5. Truant officers; powers; duties.
- 4022-6. Reports of principals and teachers.
- 4022-7. Proceedings in cases of truancy; penalties.

SECTION.

- 4022-8. Proceedings against juvenile disorderly persons.
- 4022-9. Relief to make child attend school; required time.
- 4022-10. As to institution for deaf and dumb or institution for the blind.
- 4022-11. Penalties; jurisdiction; violations by corporations; board of county visitors.
- 4022-12. Repeated violations.
- 4022-13. When law inoperative.
- 4022-14. Duty of state commissioner of common schools.
4023. (Repealed.)
4024. (Repealed.)
4025. Boards to ascertain condition of children not at school.
4026. When board may supply pupils with books.
4027. Penalties against violation of preceding provisions.
4028. (Repealed.)
4029. What is equivalent to attendance on day school.
- 4029-1. Examinations for entering high school.
- 4029-2. Township and county commencements.
- 4029-3. Tuition.
- 4029-4. Compensation of examiners and contingent expenses.

Apportionment of contingent funds by boards of education; see Sec. 3967.

SCHOOLS.

Children under age of fifteen years incapable of receiving common school education, shall be received for admission in the custodial department of the institution for feeble minded youth; see Sec. 675-5, R. S.

Sec. 4007. [Sufficient schools must be provided.] Each board of education shall establish a sufficient number of schools to provide for the free education of the youth of school age within the district under its control, at such places as will be most convenient for the attendance of the largest number of such youth, and shall continue each and every day school so established not less than twenty-four nor more than forty-four weeks in each school year; and each township board of education shall establish at least one primary school in each subdistrict under its control. (75 v. 513, § 50; S. & S. 701.)

Huron county public school—To provide for when temporarily closed. 91 v. 739; Am. 92 v. 619.

Schools at children's homes; see Sec. 3906, R. S.

Change of boundaries and suspension of schools in sub-districts, conveyance of pupils; see Sec. 3921.

All the schools in a township district required to be continued the same length of time. Sec. 3967.

Sub-district schools may be discontinued when the enumeration falls below fifteen; Sec. 4009-19.

In determining the question as to how many schools are necessary in the districts, either of townships, villages, or cities, three things should be considered: 1. Convenience of access. 2. Economy in expenditure. 3. A proper grading and classification of the pupils, in cases where grading is possible. Com.

There is no reason why two or more school houses or two or more school rooms may not be provided in a sub-district. Com.

Sec. 4008. (Repealed 1887, Feb. 22: 84 v. 34.)

This section provided for separate schools for colored children.

There is no power to establish separate schools for colored children and exclude them from other schools, since the repeal of Revised Statutes, section 4008. The assignment of youth under section 4013 can not be exercised with reference to race or color. 45 O. S., 555.

Sec. 4009. [Boards of education may establish schools of higher grade than primary.] Any board of education may establish one or more schools of higher grade than the primary schools, whenever it deems the establishment of such school or schools proper or necessary for the convenience or progress of the pupils attending the same, or for the conduct and welfare of the educational interests of the district, and such school or schools when so established, shall not be discontinued under three years from the time of the establishment thereof, except by a vote of three-fourths of the members of the board of education of each township. (1882, March 13: 79 v. 37; Rev. Stat. 1880; 75 v. 513, § 50.)

A township high school does not pass to a village incorporated out of the territory including it by reason of a general saving clause in the act of 1873. 41 O. S., 680.

Change of territory organizing a separate school district does not entitle the new district to seize on property within it that had been set apart by the township board for a higher school than a primary, although this would be within the letter of R. S., Sec. 3972, which relates to the subject. 40 O. S., 595.

This section fully authorizes boards of education to establish high schools without submitting the question to a vote of the electors of the district, unless it should be found necessary to levy a tax in excess of the maximum allowed by law and issue bonds; in which case an election is required; see Sec. 3991. Com.

(4009-1.) [Township boards may establish high schools.] Whenever the township board of education establishes a school of higher grade than the primary schools in townships, they shall have the management and control of such higher grade of schools of their proper townships which are or may be established therein by them with full power in respect to such schools to employ and dismiss teachers, and give them certificates of such employment, and for services rendered, directed to the township clerk, in the same manner and to have the same force and effect as certificates of employment of teachers by directors of sub-school districts. And shall build, repair, add to and furnish the necessary school houses, purchase or lease sites therefor, or rent suitable rooms, and make all other necessary provisions relative to such schools as they may deem proper. Said board of education shall have full power to regulate and control the admission of scholars to such schools of higher grade according to age and attainments, and may admit adults over twenty-one years of age, and scholars from other townships on such terms and under such

rules as they may adopt, and shall maintain a school or schools of such higher grade not less than twenty-four nor more than forty-four weeks in any school year. (88 v. 484.)

(4009-2.) [Estimate of funds needed.] In townships where a school of higher grade than the primaries is established, or may be established, by the board of education of such township, the board of education shall, annually, determine by estimate, as near as practicable, the entire amount of money necessary to be expended in the township for school and school house purposes, including the sustaining of teachers in such schools of higher grade, the prolonging of the terms of the several subdistricts or primary schools after the state funds have been exhausted, the erecting, repairing and furnishing of school houses, and any other school purposes not exceeding in any one year ten mills on the dollar of the taxable property of the township, which amount shall be certified in writing to the county auditor, as required by section 3960. (88 v. 484.)

Graded schools authorized in Geauga county. 90 L. L., 184.

(4009-3) Sec. 1. [Public day schools for deaf children in city districts of first and second grade, first class.] Boards of education in city districts of the first and second grade of the first class shall establish and maintain public day schools for deaf children and those defective in speech and unable to attend the public schools provided for children that can hear. (93 v. 186.)

(4009-4) Sec. 2. [Annual report by board of education.] The boards of education in such city districts shall report annually on or before September 1 of each year to the governor of the state such facts as may be required concerning such school, together with an enumeration of all the deaf children between the ages of three and twenty-one years, which enumeration shall be sworn to by the clerk of such board of education. (93 v. 186.)

(4009-5) Sec. 3. [Annual apportionment and payment by state treasurer to treasurer of board of education.] The state treasurer is hereby authorized and directed to apportion and pay out of "the state common school fund" annually to the treasurer of the board of education of any such district, in which a school or schools shall be established in accordance with the provisions of this act, the sum of one hundred and fifty dollars for each deaf child, and those defective in speech and unable by reason of said defects to attend the public schools provided for children that can hear within such districts, as is shown by the enumeration provided for in the preceding section, and whatever fund may be necessary in excess of the amount received from the state treasurer for defraying expenses of such school provided by such boards of education, shall be paid out of the general fund levied and collected

for maintaining the public schools in any such city districts of the first and second grade of the first class. (93 v. 186.)

(4009-6) **Sec. 4. [Fund.]** The money received from the state treasurer as provided in section three of this act, shall be kept separate and distinct from all other funds by the treasurer of such board of education and shall be known as "the fund for the support of schools for the deaf," and shall be paid out for no other purpose than for the establishment and maintenance of schools for the deaf, as herein provided. (93 v. 187.)

(4009-7) **Sec. 5. [Car fare for deaf children paid by board.]** The board of education of such district is hereby authorized and directed to set aside annually from "the fund for the support of schools for the deaf" a sum of money sufficient to pay car fare for deaf children who are unable to attend such school on account of being unable to pay their way to and from such school, and the same shall be distributed to such children in such manner and to such extent as the board of education of such district may provide. (93 v. 187.)

(4009-8) **Sec. 6. [Schools controlled by what laws.]** Except as provided in this act, such schools shall be controlled in all respects in accordance with an act entitled "An act to provide for the reorganization of boards of education in the city districts of the first and second grade of the first class," passed March 8, 1892, with all the amendments thereto. (93 v. 187.)

(4009-9) **Sec. 1. [Day schools for deaf children.]** Upon application by a board of education or school council of any school district of this state to the state commissioner of schools, he shall grant permission to such board of education or school council and such board of education or school council shall thereupon be empowered to maintain within its limits one or more day schools, having an average attendance of not less than five pupils, for the instruction of deaf persons over the age of three and under fifteen years, residents of the state of Ohio. (93 v. 236.)

(4009-10) **Sec. 2. [Annual and other reports by board of education.]** Such board of education or school council, which shall maintain one or more day schools for the instruction of the deaf, shall report to the state commissioner of schools annually, and as often as such state commissioner shall direct, such facts concerning such school or schools as he may require. (93 v. 236.)

(4009-11) **Sec. 3. [Annual payment to treasurer of school board by county treasurer.]** The county auditor in each county is hereby authorized and directed to apportion and the county treasurer to pay out of the state common school fund received by such county, to the treasurer or other financial officer of such board of education or school coun-

Ch. 9.

Schools and Attendance Enforced.

cil, maintaining such school or schools for the instruction of the deaf, the sum of one hundred and fifty dollars for each deaf pupil, resident of such county, instructed in any such school for at least nine months during the school year and a share of such sum proportionate to the term of instruction of any such pupil as shall be so instructed less than nine months during such year. If no such school shall be maintained in any county, but persons residing in such county shall attend such school in another county, then the county treasurer of the county not maintaining such school shall apportion and pay to the financial officer of the board of education or school council of such other county the amount above specified for each pupil attending such school in such other county. (93 v. 236.)

(4009-12) **Sec. 4. [Payments to be made by county treasurer.]** The sums provided in the next preceding section shall be paid by such county treasurer as soon as may be after the receipt by him of the state common school fund in each year, upon satisfactory proof being made to him by the president or clerk of such board of education or school council maintaining such school, of the number of pupils instructed in such school or schools, and their residences, and the period of time each such pupil shall have been so instructed in such school or schools for the preceding school year. (93 v. 237.)

(4009-13) **Sec. 5. [Teachers appointed by school commissioner; removals.]** All teachers in such schools shall be appointed by the state commissioner of schools upon application of the board of education or school council of the school district maintaining such school or schools; the state commissioner of schools to have the power to remove such teachers for cause.

[**Qualifications.**] No person shall be appointed to teach in any such school who shall not have first obtained a teacher's certificate as provided by law, and who shall not have received specific instruction in the teaching of the deaf for a term or (of) not less than one year. (93 v. 237.)

(4009-14) **Sec. 6. [Inspection.]** The state school commissioner shall select some competent person to inspect all day schools organized under this act, or by other authority and shall cause an inspection to be made of said schools at least twice a year, and said person so appointed shall make a written report to the state commissioner of common schools of the buildings in which said schools are being held, the method of instruction and all other matters which may seem to be of interest and profit to the education of the children in said schools. (93 v. 237.)

(4009-15) **Sec. 7. [Township or joint township high school districts; petition for establishment; duty of board of education; election for submission of question; form of ballot; counting of ballots]**

and returns of election.] Whenever ten qualified electors of any township, or twenty qualified electors of any two adjoining townships shall file a petition or petitions with the township clerk, or clerks of two adjoining townships, praying for the establishing of a township high school district, or a joint township high school district, it shall then be the duty of the township board of education, or boards of education, to call a meeting, or meetings, within thirty days thereafter, of the qualified electors of said township, or townships embraced in the petition, or petitions, at their usual place or places of voting, giving ten days' notice, or notices of the time and place, or places, of said election, or elections, to be posted in at least five conspicuous places in the township, or both townships, requiring said electors to vote for or against the proposed establishing a township or joint township high school district, and the building of a township or joint township high school building, and shall also at the same election submit to the electors of the township, or joint township high school district proposed, the question of levying taxes for buying site, or sites, and building a township or joint township high school house, or either of them, and the further questions whether the levy shall be made from year to year thereafter, and what amount shall be levied each year until the actual cost of such site, or sites, the erection of such high school house, or houses, is raised, and their opinions, the said electors, shall be expressed on their ballots which must be provided by the board, or boards of education, to-wit: For township or joint township high school district: "Yes." For levying taxes for site, or sites, and building township, or joint township high school house: "Yes." For township or joint township high school district: "No." For levying tax for site, or sites, and building township, or joint township high school house: "No." Which ballots shall be counted and returned by the judges and clerks of elections as in such cases made and provided. (93 v. 281.)

(4009-16) Sec. 2. [Levy certified to auditor who shall place same on duplicate for collection.] Should there be a majority of the votes cast in favor of the establishing of a township or joint township high school district, and in favor of levying taxes for buying site, or sites, and building township, or joint township high school building, or buildings, or either of them, of continuing the levy from year to year thereafter, and for the amount to be levied each year, the board shall certify the levy annually to the county auditor, who shall place the same upon the tax duplicate in the same manner that other taxes certified by such board are required to be placed thereon;

[Townships divided by county line; how levy certified and collected.] And when the townships are divided by a county line, the

Ch. 9.

Schools and Attendance Enforced.

tors of such infirmary, establish in such home, asylum or infirmary a separate school, so as to afford to the children therein, as far as practicable, the advantages and privileges of a common school education; such schools at infirmaries shall be continued in operation each year until the full share of all the school funds of the district belonging to such children, on the basis of the enumeration, is expended, and at such homes and asylums not less than forty-four weeks, if the distributive share of school funds to which such school at any such home or asylum is entitled by the enumeration of children in the institution is not sufficient to continue the schools the length of time hereby required, the deficiency shall be paid out of the funds of the institution; all schools so established in any such home, asylum or infirmary, shall be under the control and management of the respective boards of trustees or directors of such institutions, which boards of trustees or directors shall, in the control and management of such schools, as far as practicable, be subject to the same laws that boards of education and other school officers are who have charge of the common schools of such district; in the establishment of such schools the commissioners of the county in which such children's home, orphans' asylum or county infirmary is established, shall provide the necessary school-room or rooms, furniture, fuel, apparatus and books, the cost of which furniture, fuel, apparatus and books for the schools of such homes, infirmaries and asylums, shall be paid out of the funds provided for such institutions; and the board of education shall incur no expense in supporting such schools. (1883, April 19; 80 v. 217; Rev. Stat. 1880; 75 v. 513, § 50; 76 v. 75, § 1.)

See Sec. 929; also sections 2181, 2182, 2183, 2184, 2185, R. S.

For acts relating to children's homes, see Sec. 929, R. S.

Sec. 4011. [Youth may be sent to charity school at Zanesville.]

The board of education of the city of Zanesville may contract with the trustees having the management of any fund which has been provided by gift, devise, or bequest for the establishment or support of a school or schools for poor children therein, for the admission to any such school of children resident in the city, and pay to such trustees out of the school funds under its control, such tuition fee as may be agreed upon for each scholar so admitted, but not entitled to admission according to the terms of such gift, devise or bequest, and also provide for such right of visitation or control of such school or schools by the board as may be agreed upon; such school or schools shall be kept at the least equal in grade and efficiency to the corresponding public schools of the state, and every such contract shall expire in three years from the time of its execution, unless renewed or extended by agreement; but this section shall in no

manner apply to any school or schools supported or controlled by any church, congregation, sect or religious denomination or association of any kind. (75 v. 530, § 1.)

Sec. 4012. [Evening schools.] In any township, special, village, or city district, or part thereof, parents or guardians of youth of school age may petition the board of education to organize an evening school. The petition shall contain the names of not less than twenty-five youth of school age who will attend such school, and who for reasons satisfactory to the board are prevented from attending day school. Upon receiving such petition the board of education shall provide and furnish a suitable room for the evening school and employ a competent person who holds a regularly issued teacher's certificate, to teach it. Such board may discontinue any such evening school, when the average evening attendance for any month falls below twelve. (90 v. 116; 72 v. 29, § 51; S. & C. 1359.)

Sec. 4012a. [Attendance by persons more than twenty-one years old.] Any person more than twenty-one years old may be permitted to attend evening school upon such terms and upon payment of such tuition as the board of education may prescribe. (90 v. 117.)

Sec. 4013. [Who may be admitted to schools free; non-resident pupils; crediting of school tax on tuition; assignment of pupils.] The schools of each district shall be free to all youth between six (6) and twenty-one (21) years of age, who are children, wards or apprentices of actual residents of the district, including children of proper age, who are or may be inmates of a county or district children's home located in any such school district, at the discretion of the board of education of the township in which said school district is located; provided, that all youth of school age, living apart from their parents or guardians and who work to support themselves by their own labor, shall be entitled to attend school free in the district in which they are employed. Each board of education may admit other persons upon such terms or upon payment of such tuition as it may prescribe; provided, that in all counties which do not contain a city of the first grade of the first class, in such case there shall be credited on the tuition so charged the amount of school tax in such district for the current school year, which may be paid by such non-resident pupil or a parent thereof; and the several boards shall make such assignment of the youth of their respective districts to the schools established by them, as will in their opinion best promote the interests of education in their districts. (87 v. 317; 84 v. 69; 77 v. 196; Rev. Stat. 1880; 70 v. 195, § 71.)

Attending school in other districts if nearer; see sections 4022, 4022a.

The children inmates of the German Protestant Asylum of Cincinnati, are not "children, wards, or apprentices of actual residents" in the school district within which said asylum is located, and therefore, under the act of Feb. 21, 1849, are not entitled to gratuitous admission to the privileges of the public schools of said district. 10 O. S., 448.

Ch. 9.

Schools and Attendance Enforced.

No regulation can be made under this section that does not apply to all children, irrespective of race or color. Separate schools for colored children were abolished by the repeal of Sec. 4008. 45 O. S., 555.

Under this section persons under twenty-one years of age, though married, are entitled to all the privileges of the schools of the district in which they reside, notwithstanding they have not been enumerated in the school census, and in consequence can draw no part of the state school fund. Com.

A person is only entitled to vote in the sub-district in which he actually resides; the fact that his children have been transferred to another sub-district does not change his voting place. Com.

That portion of the above section relating to children living apart from their parents or guardians, who support themselves by their own labor, does not apply where a child moves into a district in which his parents do not live, with the express purpose of attending school, and incidentally works for his board and lodging. in such cases tuition can be charged. Com.

Sec. 4014. [Suspension and expulsion of pupils.] No pupil shall be suspended from school by a superintendent or teacher except for such time as may be necessary to convene the board of education, and no pupil shall be expelled except by a vote of two-thirds of such board, and not until the parent or guardian of the offending pupil has been notified of the proposed expulsion, and permitted to be heard against the same; and no pupil shall be suspended or expelled from any school beyond the current term thereof. (89 v. 96; 70 v. 195, § 71.)

The father of a child entitled to the benefits of the public school of the sub-district of his residence may maintain an action against the teacher of the school, and the local directors of the sub-district, for damages for wrongfully expelling the child from school. 21 O. S., 666.

Since the above decision was rendered the power to expel has been taken from the local directors and conferred upon the board of education. Com.

In many cases of incorrigibility proceedings can be instituted against the offender as provided by section 4022-8, as a juvenile disorderly person (section 4022-4), instead of expulsion by the board, as it is in the interest of the commonwealth to keep the child in school, if possible. Com.

Sec. 4015. [Dismissal of schools on holidays.] Teachers employed in the common schools may dismiss their schools, without forfeiture of pay, on the first day of January, the twenty-second day of February, the thirtieth day of May, the fourth day of July, the twenty-fifth day of December, and on any day set apart by proclamation of the president of the United States, or the governor of this state, as a day of fast or thanksgiving. (1886, April 9: 83 v. 73; Rev. Stat. 1880; 70 v. 195, § 116.)

For other holidays, see Sec. 4046-1, 4046-2.

Boards of education cannot compel teachers to make up for time lost on the above-mentioned days. Com.

Hiring teachers by the day does not affect their rights under this section. Com.

Sec. 4016. [School year, month, and week.] The school year shall begin on the first day of September of each year, and close on the thirty-first day of August of the succeeding year; and a school week shall consist of five days, and a school month of four school weeks. (70 v. 215, § 70; 72 v. 181, § 6.)

Boards of education cannot compel pupils to attend school, or teachers to teach the same, more than five days in any one week, and teachers cannot make up for lost time by teaching six days in a week without express authority from the board of education. Com.

Sec. 4017. [Control of schools vested in boards; appointees; salaries.] Each board of education shall have the management and control of public schools of the district with full power to appoint a superintendent and assistant superintendents of the schools, a superintendent of buildings, janitors and other employes, and fix their salaries, and shall fix the salaries of the teachers, which salaries may be increased, but shall not be diminished during the term for which the appointment is made;

[Terms.] But no person shall be appointed for a longer time than that for which a member of the board is elected.

[Election of teachers in subdistricts.] And, in township districts divided into subdistricts, the board of subdirectors shall elect the teachers in their respective subdistricts, but such election shall be subject to confirmation by a majority of the board of education.

[Certificate of election filed; reference to standing committee.] Whenever any board of subdirectors elects a teacher, the director thereof shall at once file a certificate of such election, signed by at least two members of such board, with the township clerk, who shall refer such certificate of election to the standing committee on teachers,

[Report of committee; confirmation.] And such committee shall make a report of the same to the board of education, and the board of education shall confirm or refuse to confirm such election at its next regular meeting after the filing of such certificate of election, with the township clerk.

[Failure to confirm.] If the board of education fails to confirm the teacher elected by any board of subdirectors, such board of subdirectors shall elect another teacher before the next regular meeting of the board of education;

[Failure to elect or confirm.] If the board of subdirectors fail to elect a teacher for their school, or if the board of education shall fail to confirm such election on or before the third Monday in August of any year, the board of education shall then employ a teacher for such subdistrict.

[Dismissals.] The board of education may dismiss any appointee or any teacher for inefficiency, neglect of duty, immorality or improper conduct. (93 v. 48; 91 v. 422, 113; 89 v. 96, 202; 87 v. 372; 70 v. 195, § 53.)

The restriction that no contract is valid unless money is in treasury and set apart, does not apply to contracts authorized by the provisions of law to be made for employing teachers and other school employes; see Sec. 2834b, under 3971.

Vote necessary to elect superintendent and teachers; Sec. 3982.

Sec. 6975a. It shall be unlawful for any person to offer or give, directly or indirectly, any reward or consideration, or make any present or reduction in price to any person employed in any

Ch. 9.

Schools and Attendance Enforced.

of the public schools of this state, or to any officer having any authority or control over the same for favoring, recommending or advocating the introduction, adoption or use, in the school in which such person is employed, or over which such officer has any authority or control, of any text-book, map, chart, globe, or other school supplies, or to induce him so to do; and it shall be unlawful for any such employee or officer, to accept or to offer or agree to receive or accept any reward, consideration, present, gift, or reduction in price for so doing; and it shall also be unlawful for any local director or member of a board of education to vote for, or participate in the making of any contract with any person as a teacher or instructor in any of the public schools of this state to whom he is related as father or brother, or to act in any matter in which he is pecuniarily interested, or to receive, or offer to accept or receive any reward or gain for any official act. Any person violating any of the foregoing provisions shall, upon conviction, be fined not less than twenty-five dollars, and not more than five hundred dollars, or be imprisoned not more than six months, or both.

Note—A member of a board of education or of a board of sub-directors cannot legally vote for any person related, either by blood or marriage, in the degrees mentioned in Sec. 6975a. Com.

Where instruction in rhetoric is given in any grade or department of the school, and one of the rules adopted by the board for the government of the pupils therein provides that if any pupil should fail to be prepared with a rhetorical exercise at the time appointed therefor, he or she should, unless excused on account of sickness or other reasonable cause, be immediately suspended from such department, it was held that such a rule was reasonable. 29 O. S., 89.

Boards of education are given power to appoint teachers, and in the absence of gross abuse of discretion in the exercise of this power an injunction will not lie. 13 C. C., 207.

This section, as enacted March 31, 1892, repealed by implication the same section as enacted March 15, 1892. 1 N. P., 286.

The passage of a resolution to employ a certain teacher, notice sent to him, and the party accepting and entering upon his duties, constitutes a valid contract between the school board and the teacher. 12 C. C., 249.

The salary due a teacher may be garnisheed, 39b, 140. Edit.

Instructor or teacher having sexual intercourse with female pupil; see Sec. 7024, R. S.

Illegal provisions in a contract to employ a teacher, which are separate from the legal part and are not performed, do not invalidate his right to recover his salary, as where he was employed at a certain salary, with a provision that if he could not do the work alone he should have power to employ assistance at his own expense, but he performed the service without an assistant. 29 O. S., 161.

Under R. S., Sec. 4017, as amended March 11, 1898, final power is conferred upon township boards of education in the matter of electing teachers in township sub-districts. 5 N. P., 446.

Township boards of education can, when the best interests of the schools require it, reject teachers recommended by the boards of sub-directors and cannot be required to give reasons for such action; but the township board cannot elect a teacher not recommended by the board of sub-directors until on or after the third Monday in August. Com.

Sec. 4017a. [Employment of teacher in music; appliances and books furnished.] Each board of education may employ a teacher or teachers whose duty it shall be to give instruction and training in vocal music to the youth of all the schools of the district, and said board is empowered to purchase and supply all appliances and books necessary to the proper pursuit of said branch of study. (94 v. 377.)

Sec. 4018. [Unlawful employment by township board; certificates of services; payment.] It shall be unlawful for the township board of education, prior to the annual election on the second Monday of April, and the qualification of the director or directors elected thereat, to employ or contract to employ any [teacher] superintend-

ent for a term to commence after the expiration of the current school year; and said board at the end of any month, or at the end of the term, shall give to the teacher or superintendent employed by them certificates of such employment and of the services rendered, addressed to the township clerk, who, upon presentation thereof, and compliance by such teacher or superintendent with the provisions of section 4051, shall draw orders on the township treasurer for the amounts certified to be due, in favor of the parties entitled thereto, and the treasurer shall pay the same. (93 v. 48; 89 v. 96; 87 v. 46; 70 v. 195, § 53.)

See sections 4051, 4074.

Committee on teachers and text books of township board of education to consider certificates of elections of teachers; see Sec. 3020.

See 22 O. S., 194, under Sec. 4051.

In an action against a township treasurer, asking a writ of mandamus to require him to pay an order issued to a teacher for services rendered in a sub-district, an answer alleging that before presentation of the order the funds apportioned to that sub-district for school purposes for the year during which the services were rendered had been exhausted, is a sufficient defense. 2 C. C., 475.

Cited, 9 C. C., 13, 20; 2 O. D., 152.

Sec. 4019. [Teachers dismissed for insufficient cause may institute suit.] If the board of education of any district dismiss any teacher for any frivolous or insufficient reason, such teacher may bring suit against such district, and if, on the trial of the cause, a judgment be obtained against the district, the board thereof shall direct the clerk to issue an order upon the township treasurer for the sum so found due to the person entitled thereto, to pay the same out of any money in his hands belonging to such district, and applicable to the payment of teachers; and in such suits process may be served on the clerk of the district, and service upon him shall be sufficient. (89 v. 97; 76 v. 58, § 1.)

See 2 C. C., 475, under Sec. 4018.

Sec. 4020. (Repealed, 88 v. 568, § 10.)

Sec. 4020a. (Repealed, 88 v. 568, § 10; enacted, 87 v. 378.)

Sec. 4020b. (Repealed, 88 v. 568, § 10; enacted, 87 v. 378.)

Sec. 4020c. (Repealed, 88 v. 576, § 10; enacted, 87 v. 378.)

Sec. 4020d. (Repealed, 88 v. 576, § 10; enacted, 87 v. 378.)

(4020-1) **Sec. 1.** (Superceded by sec. 4020-10—4020-14, but not repealed. Enacted, 88 v. 568.)

(4020-2) **Sec. 2.** (Superceded by sec. 4020-10—4020-14, but not repealed.)

(4020-3) **Sec. 3.** (Superceded by sec. 4020-10—4020-14, but not repealed.)

(4020-4) **Sec. 4.** (Superceded by sec. 4020-10—4020-14, but not repealed.)

(4020-5) **Sec. 5.** (Superceded by sec. 4020-10—4020-14, but not repealed.)

(4020-6) **Sec. 6.** (Superceded by sec. 4020-10—4020-14, but not repealed.)

(4020-7) **Sec. 7.** (Superceded by sec. 4020-10—4020-14, but not repealed.)

(4020-8) **Sec. 8.** (Superceded by sec. 4020-10—4020-14, but not repealed.)

(4020-9) **Sec. 9.** (Superceded by sec. 4020-10—4020-14, but not repealed. Enacted, 88 v. 568.)

TEXT-BOOK LAW.

Committee on teachers and text-books of township boards of education to recommend changes in text-books, etc., see Sec. 3920.

Where the committee on text-books of a school board recommended the adoption of a certain series of books, and the school board amended the report and then adopted it, this "determines" the books to be used under R. S., Sec. 4020, and exhausts the power to change them, and a majority vote ten days afterwards to reconsider is a nullity. 35 O. S., 368.

The adoption of the books being in connection with a proposition of the publisher, its terms as to prices are conditions of the adoption. *Id.*

A rule of the board, that resolutions for changing text-books shall be referred to a committee and delayed four weeks, is a reasonable one under R. S., Sec. 3985, and binding. Nor can a bare majority abrogate it, for Sec. 3982 must be construed with Sec. 3985. Hence, an adoption of a text-book by a majority, without reference to the committee and four weeks' delay, will not be enforced by mandamus on the application of a parent who has purchased the new books. 2 C. C., 510.

(4020-10) **Sec. 1.** [Filing and preservation of copies and prices of school books.] Any publisher or publishers of school books in the United States desiring to offer school books for use by pupils in the common schools of Ohio as hereinafter provided, shall, before such books may be lawfully adopted and purchased by any school board in this state, file in the office of the state commissioner of common schools, a copy of each book proposed to be so offered, together with the published list wholesale price thereof, and no revised edition of any such book shall be used in the common schools until a copy of such revised edition shall have been filed in the office of the said commissioner together with the published list wholesale price thereof. The said commissioner shall carefully preserve in his office all such copies of books and the prices thereof so filed. (92 v. 282.)

(4020-11) **Sec. 2.** [Maximum price; notification of publisher.] Whenever and so often as any book and the price thereof shall be so filed in the commissioner's office as provided in section 1, a commission consisting of the governor, the secretary of state and the state commissioner of common schools [he] shall immediately fix the maximum price at which such books may be sold to or purchased by boards of education as hereinafter provided, which maximum price so fixed on any book shall not exceed seventy-five per cent. of the published list wholesale price thereof, and the state commissioner of common schools shall immediately notify the publisher of such books so filed, of the maximum price so fixed. If the publisher so notified, shall notify the commissioner in:

writing that he accepts the price so fixed, and shall agree in writing to furnish such book during a period of five years at the price so fixed, such written acceptance and agreement shall entitle said publisher to offer said book so filed for sale to said board of education for use by the pupil under the terms of this act. (92 v. 282.)

State commissioner of common schools, not authorized to permit publishers to withdraw books after they have been listed, before expiration of contract. Com.

(4020-12) Sec. 3. [Notices to boards; legality dependent on compliance.] The said commissioner shall during the first half of the month of June, 1896, and during the first half of the month of June in each year thereafter, furnish to each board of education the names and addresses of all publishers who shall have during the year ending on the first day of said month of June in each year, agreed in writing to furnish their publications upon the terms provided in this act. And it shall not be lawful for any board of education to adopt or cause to be used in the common schools any book whose publisher shall not have complied, as to said book, with the provisions of this act. (92 v. 282.)

(4020-13) Sec. 4. [Procedure upon violation of agreement by publisher.] If any publisher who shall have agreed in writing to furnish books as provided in this act, shall fail or refuse to furnish such books adopted as herein provided to any board of education or its authorized agent upon the terms as herein provided, it shall be the duty of said board at once to notify the said commission of such failure or refusal, and the commission shall at once cause an investigation of such charge to be made, and if the same is found to be true the commission shall at once notify said publisher and each board of education in the state that said book shall not hereafter be adopted and purchased by boards of education; and said publisher shall forfeit and pay to the state of Ohio five hundred dollars for each failure, to be recovered in the name of the state, in an action to be brought by the attorney general, in the court of common pleas of Franklin county, or in any other proper court or in any other place where service can be made, and the amount, when collected, shall be paid into the state treasury to the credit of the common school fund of the state. (92 v. 282.)

(4020-14) Sec. 5. [Studies, etc.; shipment of books, etc.; sale to pupils; purchase from pupils; free books.] Each board of education on receiving the statements, above mentioned, from said commissioner, shall on the third Monday in August thereafter meet, and at such meeting, or at any adjourned meeting within two weeks after said Monday, determine by a majority vote of all members elected the studies to be pursued and which of said text-books so filed shall be used in the schools under its control, but no text-books so adopted shall be changed, nor

any part thereof altered or revised, nor shall any other text-book be substituted therefor for five years after the date of the selection and adoption thereof without the consent of three-fourths of all the members elected, given at a regular meeting; and each board of education shall cause it to be ascertained, and at regular meetings in April and August shall determine which, and the number of each of said books the schools under its charge shall require, until the next regular meetings in April and August, and shall cause an order to be drawn for the amount in favor of the clerk of the board of education, payable out of the contingent fund; and said clerk shall at once order said books so agreed upon by the board, of the publisher, and the publisher, on the receipt of such order, shall ship such books to said clerk without delay, and the clerk shall forthwith examine such books, and, if found right and in accordance with said order, remit the amount to said publisher, and the board of education shall pay all charges for the transportation of such books, out of the school contingent fund; but if said boards of education can, at any time, secure of the publishers books at a price less than said maximum price, it shall be its duty so to do, and may without unnecessary delay, make effort to secure such lower price before adopting any particular text-book. Each board of education shall have power to, and shall make all necessary provisions and arrangements to place the books so purchased within easy reach of and accessible to all the pupils in their district, and for that purpose may make such contracts, and take such security as they may deem necessary, for the custody, care and sale of such books and accounting for the proceeds; but not to exceed ten per cent. of the cost price shall be paid therefor, and said books shall be sold to the pupils of school age in the district, at the price paid the publisher, and not to exceed ten per cent therefore added, and the proceeds of such sale shall be paid into the contingent fund of such district, and whoever receives said books from the board of education for sale as aforesaid to the pupils, and fails to account honestly and fully for the same, or for the proceeds to the board of education when required, shall be guilty of embezzlement and punished accordingly. Provided, however, boards of education may contract with local retail dealers to furnish said books at prices above specified, the said board being still responsible to the publishers for all books purchased by the said board of education. And when pupils remove from any district, and have text-books of the kind adopted in such district, and not being of the kind adopted in the district to which they remove, and wish to dispose of the same, the board of the district from which they remove, when requested, shall purchase the same at the fair value thereof, and resell the same as other books; and nothing in this act shall prevent the board of education from furnishing free books to pupils as provided by law. That for the purpose of carrying into effect the foregoing provis-

ions of this act, and paying the expenses incident thereto, there be and is hereby appropriated out of any money in the state treasury, to the credit of the general revenue fund, not otherwise appropriated, the sum of five hundred dollars, to be disbursed and paid on the allowance and order of said commissioner. (92 v. 282.)

Penalty for bribery in sale of text-books and school apparatus, see Sec. 6075a, given in full under Sec. 4017.

(4020-15) **Sec. 1. [Purchase of Howe's Historical Collections of Ohio for schools; payment.]** The boards of education of city, village, township and special school districts in the state be and are hereby authorized to purchase for each school in either of said districts one copy of "Howe's Historical Collections of Ohio," to be used as a reference book in the study of the history of the state; provided that said book shall be in quality, style, binding and finish equal to the present published edition of said work, bound in half Russia leather, and shall cost not to exceed three dollars per volume, for each set of three volumes; provided further, that the price of the books and cost of transportation shall be paid out of the contingent fund of such district. (89 v. 241.)

(4020-16) **Sec. 2. [Care and preservation of books.]** Said books, during the vacations of schools, or when the schools are not in session, shall be taken care of in the same manner that maps, globes, dictionaries and other school apparatus are cared for and preserved. (89 v. 241.)

(4020-17) **Sec. 1. [Physical culture in schools; where.]** Physical culture which shall include calisthenics, shall be included in the branches to be regularly taught in common schools in cities of the first and second class, and in all educational institutions supported wholly or in part by money received from the state, and it shall be the duty of boards of education of cities of the first and second class, and boards of such educational institutions, to make provision in the schools and institutions under their jurisdiction for the teaching of physical culture and calisthenics, and to adopt such methods as shall adapt the same to the capacity of the pupils in the various grades therein. (89 v. 276.)

(4020-18) **Sec. 1. [Cleveland; providing for manual training of school children in public schools.]** Boards of education in cities of the second grade of the first class may annually levy on each dollar valuation of taxable property, one-fifth of one mill additional to that now allowed; the proceeds of said levy to be applied toward providing manual and domestic training for the children of the schools of said city, and said board may expend such part of said proceeds as it may deem expedient in providing tuition for such children in any manual training school that has been or may be founded in said city; provided, that at each annual election

the corporation controlling said school shall choose as directors, at least six persons, who shall be named by such board of education, and shall also choose as a director the superintendent of public schools. (84 v. 92.)

See Secs. 3958 and 3959.

(4020-19) **Sec. 1. [Manual or domestic training schools in Cleveland.]** Boards of education in cities of the second grade of the first class, may use for the purpose of purchasing sites for manual or domestic training schools, and erecting or purchasing buildings thereon for such schools, so much as they may deem expedient of the proceeds of the levy for manual and domestic training, authorized by the act entitled "An act to authorize boards of education in cities of the second grade of the first class to levy a tax for certain purposes therein specified," passed March 16, 1887. (89 v. 178.)

(4020-20) **Sec. 2. [Certificates of indebtedness.]** That for the purpose of paying for such sites or buildings, or for the construction of such buildings, such boards of education may issue certificates of indebtedness in anticipation of such levy, payable at such times not exceeding six years from date of issue as they may designate, but bearing no interest before maturity. (89 v. 178.)

(4020-21) **Sec. 1. [Columbus; levy for establishment of manual training schools.]** Boards of education in cities of the first grade of the second class be and they are hereby authorized to make a levy of five-tenths (5-10) of a mill upon each dollar valuation of the taxable property of such cities in addition to the levy authorized for other purposes, the proceeds of such levy to be used for the purpose of purchasing sites for, and erecting manual training schools thereon, such levy to run for the term of five years, at the end of which time a levy of one-fifth (1-5) of one mill annually is hereby authorized for the maintenance of such school. (85 v. 251.)

(4020-22) **Sec. 2. [Issue of bonds.]** That such boards of education are hereby authorized to issue bonds in anticipation of such levy or five-tenths (5-10) of one mill, said bonds to bear interest at not more than five (5) per cent. per annum, payable in five (5) years, and to be sold at not less than their par value. (85 v. 251.)

See Secs. 3958 and 3959.

(4020-23) **Sec. 1. [Instruction in the effects of alcoholic drinks and other narcotics; made a regular branch of study.]** The nature of alcoholic drinks and other narcotics, and their effects on the human system, in connection with the various divisions of physiology and hygiene, shall be included in the branches to be regularly taught in the common schools of the state, and in all educational institutions supported wholly, or in part, by money from the state; and it shall

be the duty of boards of education, and boards of such educational institutions to make suitable provisions for this instruction in the schools and institutions under their respective jurisdiction, giving definite time and place for this branch in the regular course of study; and to adopt such methods as will adapt the same to the capacity of pupils in the various grades; and to corresponding classes as found in ungraded schools; the same tests for promotion shall be required in this as in other branches. (94 v. 396; 85 v. 213.)

(4020-24) **Sec. 2.** [Instruction required in teachers' institutes and teachers' training schools; teachers' certificate must contain; enforcement of law.] In all teachers' institutes, also in all normal schools and teachers' training classes which shall hereafter be established by the state, adequate time and attention shall be given to instruction in the best methods of teaching this branch. No certificate shall be granted to any person to teach in the common schools or in any educational institution supported as aforesaid who does not pass a satisfactory examination on this subject, and the best methods of teaching the same. It shall be the duty of the state commissioner of common schools to see that the provisions in this section relating to county teachers' institutes, and schools and classes by whatever name hereafter established for training teachers, and the examination of teachers, are carried out; and said commissioner shall, each year, make full report of the enforcement of said section in connection with his annual report. (94 v. 396; 85 v. 213.)

Teachers' certificates; see Sec. 4074.

• (4020-25) **Sec. 3.** [Penalty for failure to enforce law; jurisdiction of courts.] Any school official, or any employe in any way concerned, in the enforcement of the act, who wilfully refuses or neglects to provide for, or to give the instruction required by this act, shall be fined, and shall pay for each offense the sum of twenty-five dollars. Mayors, justices of the peace and probable judges shall have concurrent jurisdiction with the common pleas court to try the offenses described in this act and all fines, or penalties, collected under this act shall be paid into the general county school fund of the county in which such fine or penalty was collected. (94 v. 396; 85 v. 213.)

Sec. 4021. [When German language to be taught, etc.] The board of any district shall cause the German language to be taught in any schools under its control, during any school year, when a demand therefor is made, in writing, by seventy-five freeholders resident of the district, representing not less than forty pupils who are entitled to attend such school, and who, in good faith, desire and intend to study the German and English languages together;

but such demand shall be made at a regular meeting of the board, and prior to the beginning of such school year; and any board may cause the German or other language to be taught in any school under its control, without such demand. (70 v. 195, § 52.)

Sec. 4022. [Pupils may be sent from one district to another.] The board of any district may contract with the board of any other district for the admission of pupils into any school in such other district, on such terms as may be agreed upon by such boards; and the expense so incurred shall be paid out of the school funds of the district sending such pupils. (73 v. 243, § 64.)

Who may be admitted to the public schools; see Sec. 4013.

The contract must be express, merely permitting the attendance of a non-resident pupil creates no liability. 50 O. S., 439.

Sec. 4022a. [Attendance at nearest school; expense per capita; Cuyahoga and Franklin counties.] The board of education of any township district, [subdistrict,] joint subdistrict, special or village district, within the state of Ohio, shall permit children of school age who reside further than one and one-half miles from the school where they have a legal residence under the school laws of Ohio, to attend the nearest subdistrict or joint subdistrict school; or the grades below the high school in special and village district schools; and where such children are under twelve years of age, boards of education of city districts of the first class shall permit them to attend schools under their control and the per capita current expense of running the school in the district where such children attend, for the term so attending, shall, upon the demand of the board of education of such district, be paid by the board of education of the district where such children have a legal residence. The per capita cost of running the school in the subdistrict and joint subdistricts shall be the quotient produced by dividing the total current expense of running such school by the total number of children of school age in such district; the per capita cost of running the school in special and village districts shall be the quotient arising from dividing the total current expense of the departments below the high school, including so much of the superintendent's salary as may be paid for the supervision of such departments, by the total enrollment in these departments; provided that in counties containing a city of the second grade of the first class and the first grade of the second class, any board of education of any township district located therein, may, when its opinion the same will be for the best interests of the pupils therein, temporarily suspend school in any subdistrict, and provide for the conveyance of said pupils to the school in the adjoining subdistrict most convenient for them respectively. Provided that nothing in this act shall be so construed as to require any pupils to procure the consent of the board of education either in the district in which said pupil is entitled to attend

under the provisions of this act, but the attendance as herein provided for shall be a matter of right. (92 v. 132; 91 v. 54; 90 v. 295; 89 v. 233.)

No contract between the boards is necessary. If the receiving board give the permission, the sending board must pay, no permission of the sending board is necessary. 10 C. C., 617.

The distance is to be measured by the most direct public highway, from the school house to the nearest portion of the curtilage of the child's residence. 58 O. S., 390.

This section of the law does not apply where transportation is furnished to pupils. Com.

COMPULSORY EDUCATION.

"The statute passed by the general assembly of the state of Ohio, April 25, 1890, entitled 'An act to compel children under 14 years of age to attend school a certain length of time each year'; Held to be constitutional.

"The provisions of section 11 of said statute apply to the principals and teachers of parochial schools, such schools being included in the term 'private schools.'

"1st. The proviso to section 9 of the act is: 'Provided that this law shall not be operative in any school district where there are not sufficient seating accommodations to seat children compelled to attend school under the provisions of this act'; Held, the provision does not require the furnishing of seating accommodations for children attending private schools.

"Held, further, that the burden of proving that there was not sufficient seating capacity was incumbent, in the first instance, upon the defendant; but upon the whole evidence the burden of proof remains with the prosecution.

"Section 13 of the act, as amended, does not give mayors, justices of the peace and probate judges *exclusive* jurisdiction to try persons or officers for neglecting to perform duties required of them under said act, but the jurisdiction conferred upon them is concurrent with that of the court of common pleas. In criminal prosecutions the state has a right to demand and have a struck jury to try the case." 5 C. C., 638; Aff'd by Supreme Court (no report).

(4022-1) Sec. 1. [In what branches children must be taught; necessary time of attendance; excuse; appeal in case of refusal to excuse.] All parents, guardians and other persons who have care of children, shall instruct them, or cause them to be instructed in reading, spelling, writing, English grammar, geography and arithmetic. Every parent, guardian or other person having charge of any child between the ages of eight and fourteen years, shall send such child to a public, private or parochial school, for the following period: In city districts, in each school year beginning September first, not less than twenty weeks, at least ten weeks of which, commencing within the first four weeks of the school year, shall be consecutive; and in special, village and township districts, not less than sixteen weeks in each school year, eight of which, commencing within the first four weeks of the school year, shall be consecutive, unless the child is excused from such attendance by the superintendent of the public schools, in city or other districts having such superintendent, or by the clerk of the board of education in village, special and township districts not having such superintendent, or by the principal of the private or parochial school, upon a satisfactory showing, either that the bodily or mental condition of the child does not permit of its attendance at school, or that the child is being instructed at home by a person qualified, in the opinion of the superintendent of schools in city or other districts having such superintendent, or the clerk of the board of education in special, village and township districts not having

Ch. 9.

Schools and Attendance Enforced.

such superintendent, to teach the branches named in this section. In case such superintendent, principal or clerk refuse to excuse a child from attendance on school, an appeal may be taken from such decision to the probate judge of the county, upon the giving of a bond, within ten days after such refusal, to the approval of said judge, to pay all the costs of the appeal, and the decision of the probate judge in the matter shall be final. All children between the ages of eight and sixteen years, not engaged in some regular employment, shall attend school for the full term the schools of the district in which they reside are in session during the school year, unless excused for the reasons above named. (90 v. 285; 86 v. 333; 89 v. 389; 87 v. 316, 143.)

Sec. 6986-7. No child under the age of thirteen years shall be employed in any factory, workshop, mercantile or other establishment, directly or indirectly; and no boy under fifteen years of age, and no girl under sixteen years of age, shall be employed at any work performed for wages or other compensation, or in assisting any person employed as a wage-earner, when the public schools in which district such child resides are in session, providing this act shall not apply to females working at household work.

This law, section 6986-7, does not change the original compulsory education law except as to the age of children affected, making the age limit for boys fifteen years, for girls sixteen years except when working at household work, instead of fourteen years as formerly; see opinion of attorney general under Sec. 4022-2. Com.

The school week consists of five days, consequently twenty weeks would be construed as meaning one hundred days, and sixteen weeks as eighty days, any other construction might defeat the entire object of the law. Com.

(4022-2) Sec. 2. [Employment of children under fourteen years of age; penalty.] No child under the age of fourteen years shall be employed by any person, company or corporation during the school term, and while the public schools are in session, unless the parent, guardian or person in care of such child, shall have fully complied with the requirements of section 1 of this act. Every person, company or corporation shall require proof of such compliance before employing any such minor, and shall make and keep a written record of the proof given, and shall, upon the request of the truant officer hereinafter provided for, permit him to examine such record, and also the record provided for by section 6986~~aa~~ of the Revised Statutes. Any person, company or corporation employing any child contrary to the provisions of this section, shall be fined not less than twenty-five nor more than fifty dollars. (90 v. 285; 86 v. 334, § 2.)

Complying with your personal request for a legal construction of section 4022-2 of the Revised Statutes of Ohio and section 1 of what is commonly known as the Davis law, passed April 19, 1898 (93 O. L., p. 123), this office begs to submit the following opinion:

"As you will observe, there is a specific repeal of part of section 4022-2 in that the Davis law repeals section 6986~~aa~~, which is incorporated in and made a part of section 4022-2. If this were all, the other part of the section would stand. But the age at which children can be employed has, as you will notice, been changed from fourteen to fifteen years, and this is such a repugnancy between the two acts as to preclude their being reconciled so as to permit giving effect to both acts. Therefore, under the rule of construction

that where it is necessary to hold an earlier statute impliedly repealed by a later one, on account of the conflict between them, we hold that section 1 of the Davis act repeals section 4022-2. The extent of the repeal being measured by the extent of the conflict or inconsistency between the acts, and the above sections being the only ones that conflict, the balance of the compulsory education law remains in force. The intent of the legislature that the remaining sections of the education law should stand, is, we believe, manifest, for the Davis act charges the inspector of workshops and factories with the duty of prosecuting all violations of the law and confers upon the chief and district inspectors the same authority and power to enforce the law as is invested in the truant officers to compel school attendance. We would, therefore, advise you to follow the Davis law in so far as it repeals sections 4022-2. Attorney General.

Sec. 302. No child under fifteen years of age shall be allowed to work in any mine, during the school term of the public schools in the district in which such minor resides, and no child under fourteen years of age shall be employed in any mine during the vacation interim of the public schools in the school district in which such minor resides, and in all cases of minors applying for work the agent of such mine shall see that the provisions of this section are not violated; he shall also keep a record of all minors employed by him, or by any person employed in said mines, giving the name, age, place of birth, parents' name and residence, with character of employment, and he shall demand from such minor proof that he has complied with the requirements of the school laws; and it shall be the duty of the mine inspector to inspect such record and to report to the chief inspector of mines the number of minors employed in or about such mines and to enforce the provisions of this section.

(4022-3) Sec. 3. [Half day attendance of minors in certain cases; employment of such minors; penalty; private instruction of such minors.] All minors over the age of fourteen and under the age of sixteen years, who cannot read and write the English language, shall attend school at least one-half of each day, or attend a public night school, or take regular private instruction from some person qualified, in the opinion of the superintendent of schools in city or other districts having such superintendent, or the clerk of the board of education in village, special and township districts not having such superintendent, to teach such branches, until such minor obtain a certificate from such superintendent or clerk, that he or she can read at sight and write legibly simple sentences in the English language. Every person, company or corporation employing, or having in employment any such minor, shall exact the school attendance or instruction required by this section, as a condition of employment, and shall, on request of the truant officer hereinafter provided for, furnish evidence that such minor is complying with the requirements of this section. Every person, company or corporation which employs, or has in employment, any such minor without exacting the school attendance or instruction required by this section, or employs or has in employment any such minor who is not complying with the requirements of this section, shall be fined not less than twenty-five nor more than fifty dollars. Provided, any employer may, with the approval of the superintendent or clerk above mentioned, make provision for the private instruction of such minors in his employ. (90 v. 286; 86 v. 334, §§ 3, 4; 87 v. 143.)

such superintendent, to teach the branches named in this section. In case such superintendent, principal or clerk refuse to excuse a child from attendance on school, an appeal may be taken from such decision to the probate judge of the county, upon the giving of a bond, within ten days after such refusal, to the approval of said judge, to pay all the costs of the appeal, and the decision of the probate judge in the matter shall be final. All children between the ages of eight and sixteen years, not engaged in some regular employment, shall attend school for the full term the schools of the district in which they reside are in session during the school year, unless excused for the reasons above named. (90 v. 285; 86 v. 333; 89 v. 389; 87 v. 316, 143.)

Sec. 6986-7. No child under the age of thirteen years shall be employed in any factory, workshop, mercantile or other establishment, directly or indirectly; and no boy under fifteen years of age, and no girl under sixteen years of age, shall be employed at any work performed for wages or other compensation, or in assisting any person employed as a wage-earner, when the public schools in which district such child resides are in session, providing this act shall not apply to females working at household work.

This law, section 6986-7, does not change the original compulsory education law except as to the age of children affected, making the age limit for boys fifteen years, for girls sixteen years except when working at household work, instead of fourteen years as formerly; see opinion of attorney general under Sec. 4022-2. Com.

The school week consists of five days, consequently twenty weeks would be construed as meaning one hundred days, and sixteen weeks as eighty days, any other construction might defeat the entire object of the law. Com.

(4022-2) Sec. 2. [Employment of children under fourteen years of age; penalty.] No child under the age of fourteen years shall be employed by any person, company or corporation during the school term, and while the public schools are in session, unless the parent, guardian or person in care of such child, shall have fully complied with the requirements of section 1 of this act. Every person, company or corporation shall require proof of such compliance before employing any such minor, and shall make and keep a written record of the proof given, and shall, upon the request of the truant officer hereinafter provided for, permit him to examine such record, and also the record provided for by section 6986aa of the Revised Statutes. Any person, company or corporation employing any child contrary to the provisions of this section, shall be fined not less than twenty-five nor more than fifty dollars. (90 v. 285; 86 v. 334, § 2.)

Complying with your personal request for a legal construction of section 4022-2 of the Revised Statutes of Ohio and section 1 of what is commonly known as the Davis law, passed April 19, 1898 (93 O. L., p. 123), this office begs to submit the following opinion:

"As you will observe, there is a specific repeal of part of section 4022-2 in that the Davis law repeals section 6986aa, which is incorporated in and made a part of section 4022-2. If this were all, the other part of the section would stand. But the age at which children can be employed has, as you will notice, been changed from fourteen to fifteen years, and this is such a repugnancy between the two acts as to preclude their being reconciled so as to permit giving effect to both acts. Therefore, under the rule of construction

that where it is necessary to hold an earlier statute impliedly repealed by a later one, on account of the conflict between them, we hold that section 1 of the Davis act repeals section 4022-2. The extent of the repeal being measured by the extent of the conflict or inconsistency between the acts, and the above sections being the only ones that conflict, the balance of the compulsory education law remains in force. The intent of the legislature that the remaining sections of the education law should stand, is, we believe, manifest, for the Davis act charges the inspector of workshops and factories with the duty of prosecuting all violations of the law and confers upon the chief and district inspectors the same authority and power to enforce the law as is invested in the truant officers to compel school attendance. We would, therefore, advise you to follow the Davis law in so far as it repeals sections 4022-2. Attorney General.

Sec. 302. No child under fifteen years of age shall be allowed to work in any mine, during the school term of the public schools in the district in which such minor resides, and no child under fourteen years of age shall be employed in any mine during the vacation interim of the public schools in the school district in which such minor resides, and in all cases of minors applying for work the agent of such mine shall see that the provisions of this section are not violated; he shall also keep a record of all minors employed by him, or by any person employed in said mines, giving the name, age, place of birth, parents' name and residence, with character of employment, and he shall demand from such minor proof that he has complied with the requirements of the school laws; and it shall be the duty of the mine inspector to inspect such record and to report to the chief inspector of mines the number of minors employed in or about such mines and to enforce the provisions of this section.

(4022-3) Sec. 3. [Half day attendance of minors in certain cases; employment of such minors; penalty; private instruction of such minors.] All minors over the age of fourteen and under the age of sixteen years, who cannot read and write the English language, shall attend school at least one-half of each day, or attend a public night school, or take regular private instruction from some person qualified, in the opinion of the superintendent of schools in city or other districts having such superintendent, or the clerk of the board of education in village, special and township districts not having such superintendent, to teach such branches, until such minor obtain a certificate from such superintendent or clerk, that he or she can read at sight and write legibly simple sentences in the English language. Every person, company or corporation employing, or having in employment any such minor, shall exact the school attendance or instruction required by this section, as a condition of employment, and shall, on request of the truant officer hereinafter provided for, furnish evidence that such minor is complying with the requirements of this section. Every person, company or corporation which employs, or has in employment, any such minor without exacting the school attendance or instruction required by this section, or employs or has in employment any such minor who is not complying with the requirements of this section, shall be fined not less than twenty-five nor more than fifty dollars. Provided, any employer may, with the approval of the superintendent or clerk above mentioned, make provision for the private instruction of such minors in his employ. (90 v. 286; 86 v. 334, §§ 3, 4; 87 v. 143.)

Ch. 9.

Schools and Attendance Enforced.

Boards of education are authorized by section 3985 to make rules and regulations for the government of the schools under their control; they can therefore prescribe the part of the day to be attended under this section of the law, whether morning or afternoon. Com.

What attendance at night school is equivalent to attendance at day school, see Sec. 4029.

"Write legibly simple sentences in the English language," evidently means, not the copying of such sentences, but the writing of them at dictation. Com.

(4022-4) Sec. 4. [Juvenile disorderly persons.] Every child between the ages of eight and fourteen years, and every child between the ages of fourteen and sixteen years unable to read and write the English language, or not engaged in some regular employment, who is an habitual truant from school, or who absents itself habitually from school, or who, while in attendance at any public, private or parochial school, is incorrigible, vicious or immoral in conduct, or who habitually wanders about the streets and public places during school hours having no business or lawful occupation, shall be deemed a juvenile disorderly person, and be subject to the provisions of this act. (90 v. 286; 86 v. 335, § 5; 90 v. 57; 88 v. 136.)

Many different meanings are likely to be attached to the phrases "regular employment," "habitual truant," "lawful occupation," etc., and in the absence of any decision of the court defining these expressions, it is very difficult, in fact scarcely possible to draw an exact line of definition. Boards of education should adopt rules governing such matters. Such rules should inform the public as to the interpretation placed upon these expressions by the board, and if reasonable, would almost certainly be sustained by the courts. Com.

Proceedings against juvenile disorderly persons, see Sec. 4022-8.

(4022-5) Sec. 5. [Truant officers; powers; duties.] To aid in the enforcement of this act, truant officers shall be appointed and employed as follows: In city districts the board of education shall appoint and employ one or more truant officers; in special, village and township districts the board of education shall appoint a constable or other person as truant officer. The compensation of the truant officer shall be fixed by the board appointing him. The truant officer shall be vested with police powers, and shall have authority to enter workshops, factories, stores and all other places where children may be employed, and do whatever may be necessary, in the way of investigation or otherwise, to enforce this act. The truant officer shall institute proceedings against any officer, parent, guardian, person or corporation violating any provisions of this act, and shall otherwise discharge the duties prescribed in this act, and perform such other services as the superintendent of schools or the board of education may deem necessary to preserve the morals and secure the good conduct of school children, and to enforce this act. The truant officer shall keep a record of his transactions for the inspection and information of the superintendent of the schools and the board of education; and he shall make daily reports to the superintendent of schools during the school term in cities, and to the clerk of the board of education, as often as required by him, in special, village and township districts. Suitable blanks for the use of

the truant officer shall be provided by the clerk of the board of education. (90 v. 286; 86 v. 335, § 6; 87 v. 325, 114.)

Chief and district inspectors of workshops have authority of truant officers, etc., under act as to employment of minors; see Sec. 6986-10, R. S.

• Where a pupil is attending school in a district in which he does not reside, he is under the jurisdiction of the school officers of the district where he attends. Com.

(4022-6) Sec. 6. [Reports of principals and teachers.] It shall be the duty of all principals and teachers of all schools, public, private and parochial, to report to the clerk of the board of education of the city, special, village or township district in which the schools are situated, the names, ages and residence of all pupils in attendance at their schools, together with such other facts as said clerk may require, in order to facilitate the carrying out of the provisions of this act, and the clerk shall furnish blanks for such purpose, and such report shall be made in the last week of September, December, February and April of each year. It shall be the further duty of such principals and teachers to report to the truant officer, the superintendent of public schools, or the clerk of the board of education, all cases of truancy or incorrigibility in their respective schools as soon after these offenses have been committed as practicable. (90 v. 287.)

See 5 C. C., 638, immediately preceding Sec. 4022-1.

Boards of education should have blank forms printed to comply with the provisions of this section of the law. Com.

(4022-7) Sec. 7. [Proceedings in cases of truancy; penalties.] On the request of the superintendent of schools or the board of education, or when it otherwise comes to his notice, the truant officer shall examine into any case of truancy within his district, and warn the truant and its parents, guardian or other person in charge, in writing, of the final consequences of truancy if persisted in. When any child between the ages of eight and fourteen years, or any child between the ages of fourteen and sixteen years who cannot read and write the English language or is not engaged in some regular employment, or any child between the ages of fourteen and sixteen years who has been discharged from employment to obtain instruction or schooling, is not attending school without lawful excuse and in violation of the provisions of this act, the truant officer shall notify the parent, guardian or other person in charge of such child, of that fact, and require such parent, guardian or other person in charge, to cause the child to attend some recognized school within five days from the date of the notice; and it shall be the duty of the parent, guardian or other person in charge of the child, so to cause its attendance at some recognized school. Upon failure to do so, the truant officer shall make complaint against the parent, guardian or other person in charge of the child, in any court of competent jurisdiction in the city, special, village or township district in which the offense occurs,

for such failure, and upon conviction, the parent, guardian or other person in charge, shall be fined not less than five dollars nor more than twenty dollars, or the court may, in its discretion, require the person so convicted to give a bond in the penal sum of one hundred dollars, with sureties to the approval of the court, conditioned that he or she will cause the child under his or her charge to attend some recognized school within five days thereafter, and remain at such school during the term prescribed by law. And upon the failure or refusal of any such parent, guardian or other person to pay said fine or furnish said bond according to the order of the court, then said parent, guardian or other person shall be imprisoned in the county jail not less than ten days nor more than thirty days. (90 v. 287; 86 v. 336, §§ 8, 9.)

Under this section trial by jury is not authorized. The courts have discriminated between imprisonment as a direct penalty for an offense and imprisonment used as a means of enforcing the payment of a fine. 42 O. S., 186. Section 12 of this law makes imprisonment a direct penalty for the offense and hence provides for a trial by jury. Com.

For form of notice, see Appendix.

(4022-8) Sec. 8. [Proceedings against juvenile disorderly persons.] If the parent, guardian or other person in charge of any child shall, upon the complaint under the last section for a failure to cause the child to attend a recognized school, prove inability to do so, then he or she shall be discharged, and thereupon the truant officer shall make complaint that the child is a juvenile disorderly person within the meaning of section 4 of this act. If such complaint be made before any mayor or justice of the peace, it shall be certified by such magistrate to the probate judge. The probate judge shall hear such complaint, and if he determine that the child is a juvenile disorderly person within the meaning of section 4 hereof, he shall commit the child, if under ten years of age, and eligible for admission thereto, to a children's home, or if not eligible, then to a house of refuge if there be one in the county, or to the boys' industrial school or the girls' industrial home, or to some other juvenile reformatory. No child over ten years of age shall be committed to a county children's home, and any child committed to a children's home, may, on request of the trustees of such home, and it being shown that it is vicious and incorrigible, be transferred by the probate judge to the boy's industrial school or the girls' industrial home. A child committed to any juvenile reformatory under this section, shall not be detained there beyond the age of sixteen years and may be discharged sooner by the trustees under the restrictions applicable to other inmates. Any order of commitment to a juvenile reformatory may be suspended, in the discretion of the probate judge, for such time as the child may regularly attend school and properly conduct itself. The expense incurred in the transportation of a child to a juvenile reformatory and the costs in the

case in which the order of commitment is made, shall be paid by the county from which the child is committed, after the manner provided in section 759 of the Revised Statutes. Provided, further, that if for any cause the parent, guardian or other person in charge of any juvenile disorderly person as defined in section 4 hereof, shall fail to cause such juvenile disorderly person to attend school, then complaint against such juvenile disorderly person shall be made, heard and determined in like manner as provided in case the parent proves inability to cause such juvenile disorderly person to attend school. (90 v. 288; 86 v. 337, § 8; 87 v. 325, 144.)

As to first giving notice to the board of county visitors, see Sec. 633-18, R. S.

Attention is called to the fact that only the probate judge can commit the child to any of the reformatory institutions; see Sec. 11. Com.

(4022-9) Sec. 9. [Relief to enable a child to attend school; required time.] When any truant officer is satisfied that any child, compelled to attend school by the provisions of this act, is unable to attend school because absolutely required to work, at home or elsewhere, in order to support itself or help support or care for others legally entitled to its services, who are unable to support or care for themselves, the truant officer shall report the case to the authorities charged with the relief of the poor, who shall thereupon, if the case be a meritorious one, afford such relief as will enable the child to attend school the time each year required under this act. Such child shall not be considered or declared a pauper by reason of the acceptance of the relief herein provided for. In case the child or its parents or guardian refuse or neglect to take advantage of provisions thus made for its instruction, such child may be committed to a children's home or a juvenile reformatory, as provided in section 8 hereof. Boards of education, in urgent and deserving cases where no other relief is available, and where neither parents nor child are at fault, may make suitable temporary arrangements for the instruction of the child, described in this section, either at home or at school, and for such purpose may incur necessary expense to be paid out of the school funds of the district. (90 v. 289; 86 v. 337, § 8.)

This section of the law refers to *all* authorities charged with the relief of the poor, and makes it the duty of such authorities, and of the board of education, to see that no child is prevented from receiving an education on account of poverty. Com.

(4022-10) Sec. 10. [As to institution for deaf and dumb or institution for the blind.] The provisions of this act shall apply to children entitled, under existing statutes, to attend school at the institution for the deaf and dumb or the institution for the blind, so far as the same are properly enforceable. Truant officers shall, within sixty days after the passage of this act, and annually between the first day of July and the first day of August, report to the probate judges of their respective counties the names, ages and residence of all such children between

the ages of eight and eighteen years, with the names and postoffice address of their parents, guardians or the persons in charge of them; also a statement whether the parents, guardian or person in charge of each child is able to educate and is educating the child, or whether the interests of the child will be promoted by sending it to one of the state institutions mentioned. Upon information thus or otherwise obtained, the probate judge may fix a time when he will hear the question whether any such child shall be required to be sent for instruction to one of the state institutions mentioned, and he shall thereupon issue a warrant to the proper truant officer or some other suitable person, to bring the child before such judge at his office at the time fixed for the hearing; and shall also issue an order on the parents, guardian or person in charge of the child, to appear before him at such hearing, a copy of which order, in writing, shall be served personally on the proper person by the truant officer or other person ordered to bring the child before the judge. If, on the hearing, the probate judge is satisfied the child is not being properly educated at home, and will be benefited by attendance at one of the state institutions mentioned, and is a suitable person to receive instruction therein, he may send or commit such child to such institution. The cost of such hearing, and the transportation of the child to such institution shall be paid by the county after the manner provided, where a child is committed to a state reformatory under section 8 hereof; provided, nothing in this section contained shall be construed to require the trustees of either of the state institutions mentioned, to receive any child not a suitable subject to be received and instructed therein, under the laws, rules and regulations governing such institutions. (90 v. 289; 86 v. 337, § 8.)

(4022-II) **Sec. II. [Penalties; jurisdiction; violations by corporations; board of county visitors.]** Any officer, principal, teacher or person mentioned in this act, neglecting to perform any duty imposed upon him by this act, shall be fined not less than twenty-five dollars nor more than fifty dollars for each offense. Any officer or agent of any corporation violating any provision of this act, who participates or acquiesces in or is cognizant of such violation, shall be fined not less than twenty-five dollars nor more than fifty dollars. Any person who violates any provision of this act for which a penalty is not elsewhere in this act provided, shall be fined not more than fifty dollars. Mayors, justices of the peace, and probate judges shall have jurisdiction to try the offenses described in this act, and their judgment shall be final. When complaint is made, information filed, or indictment found against any corporation for violating this act, summons shall be served, appearance made, or plea entered, as provided in section 7231, Revised Statutes, except that in complaints before magistrates, service shall be made by the constable.

In every case of complaint against a child involving commitment to any children's home or juvenile reformatory, the board of county visitors shall be notified and must attend and protect the interest of the child on the hearing, as provided in the act of March 29, 1892 (89 O. L., 160); and the order of commitment of the child to a state reformatory must show that the county visitors were so notified and attended the hearing. (90 v. 290; 86 v. 338, §§ 11, 12, 13; 87 v. 326, 145.)

"Private schools" include parochial schools, 5 C. C., 638; Aff'd by S. C.

The jurisdiction here conferred is not exclusive but is concurrent with the common pleas. Id.

(4022-12) Sec. 12. [Repeated violations.] Every person who, after being once convicted for violating any of the provisions of this act, shall be convicted of again violating any of the provisions of this act, may, in addition to the punishment by way of a fine elsewhere provided for, be imprisoned not less than ten days nor more than thirty days. On complaint, before a mayor or justice of the peace, of a second violation of this act involving the punishment of imprisonment, if a trial by jury be not waived, a jury shall be chosen and the case tried, after the manner provided in section 3718a, Revised Statutes. (90 v. 290.)

(4022-13) Sec. 13. [Where law inoperative, etc.] This law shall not be operative in any school district where there are not sufficient accommodations in the public schools to seat children compelled to attend the public schools under the provisions of this act. It is hereby made the duty of every board of education in this state to provide sufficient accommodations in the public schools for all children in their district compelled to attend the public schools under the provisions of this act. Authority to levy the tax and raise the money necessary for such purpose, is hereby given the proper officers charged with such duty under the law. (90 v. 291.)

The provision of the former act does not require seating accommodations for children attending private schools. 5 C. C., 638.

"Each board of education shall establish a sufficient number of schools to provide for the free education of the youth of school age within the district under its control"; see Sec. 4007.

(4022-14) Sec. 14. [Duty of state commissioner of common schools.] It shall be the duty of the state commissioner of common schools, within sixty days after the passage of this act, and from time to time thereafter whenever he may deem it advisable, to formulate and forward to the boards of education throughout the state, regulations and suggestions for the instruction and guidance of all boards, officers, superintendents, principals, teachers and persons charged with the enforcement of this act, or any of its provisions. (90 v. 291.)

This compulsory law is one of the most important educational measures of the last twenty-five years. While the law, as it now exists in its amended form is easy of interpretation, its success will depend largely upon the interest taken in it by school superintendents,

Ch. 9.

Schools and Attendance Enforced.

teachers and boards of education. Teachers should never forget that the treatment of the pupil after he has been compelled to attend school is a powerful factor in successfully carrying out the true spirit of this law. Com.

For forms, see Appendix.

Sec. 4023. (Repealed April 15, 1889; 86 v. 333, 338.)

Sec. 4024. (Repealed April 15, 1889; 86 v. 333, 338.)

Sec. 4025. [Boards to ascertain condition of children not at school.] Each board of education shall ascertain, on the second Monday of February and the second Monday of September, or within fifteen days thereafter, each year, in such manner as it may deem most expedient, the condition of all children under fourteen years of age within its jurisdiction employed at any daily labor, or who are not in attendance at any common or private school, and shall report all violations of this chapter to its clerk, who shall at once proceed to prosecute each and every such offense. (74 v. 57, § 3.)

Sec. 4026. [Free school books.] That each board of education may furnish the necessary school books free of charge, to enable the parent or guardian, without expense therefor, to comply with the requirements of this chapter, the same to be paid for out of the contingent fund at the disposal of the board; and such levy each year, in addition if necessary to that otherwise authorized by law, is hereby authorized, as shall be necessary to furnish such school books free of charge to all the pupils attending the public schools; but such pupils as are already wholly or in part supplied with necessary school books shall be supplied free of charge only as other or new books are needed; and all school books furnished as herein provided, shall be considered and be the property of the district and loaned to the pupils on such terms and conditions as each board may prescribe. (91 v. 260; 87 v. 317; 74 v. 57, § 4.)

Sec. 4027. [Penalties against violations of preceding provisions.] A parent, guardian, or other person, who fails to comply with the provisions of this chapter, shall be liable to a fine of not less than two nor more than five dollars for the first offense, nor less than five nor more than ten dollars for each subsequent offense; such fine shall be collected by the clerk of the board of education, in the name of the state, in an action before any court having competent jurisdiction; and the money so collected by each clerk shall be paid to the county treasurer, and be applied to the use of the common schools of his district. (74 v. 57, § 5.)

As to the employment of youth in mines, see Sec. 302; for penalty, see Sec. 303, R. S.

Sec. 4028. (Repealed April 15, 1889; 86 v. 333, 338.)

Sec. 4029. [What is equivalent to attendance on day school.] Two weeks' attendance at half time or night school, shall be considered, within the meaning of this chapter, equivalent to an attendance of one week at a day school. (74 v. 57, § 7.)

"BOXWELL" LAW.

(4029-1) Sec. 1. [Examination for entering high school; payment of tuition.] Each board of county school examiners shall hold examinations of pupils of the subdistricts and special districts, in the subjects of orthography, reading, writing, arithmetic, geography, English grammar, United States history, and physiology. Two such examinations shall be held at such place or places and on such dates as the board of county examiners may determine, and shall be of such a character as shall permit the successful applicants, upon the payment of tuition, to enter any high school in the county in which the applicant resides, or in any adjoining county. The tuition of such successful applicant shall be paid by the board of education of the township or the special district in which such applicant resides, provided that there is no high school maintained and supported by the township or special district in which such pupil resides, where such pupil may attend without paying tuition. (94 v. 175; 92 v. 198; 91 v. 67; 89 v. 123.)

The term "high school" is not defined by law, but for the purposes of this act the prescribed high school course of study should be for a period of not less than two years and should include branches of study higher than those enumerated in the above section. Com.

The law does not definitely designate whether the graduate or board of education has the selection of the school to be attended, but as the payment of tuition is made compulsory upon the board of education, it is reasonable to presume that the legislature intended to confer this privilege on the board; providing a high school of recognized standing and conveniently located is selected. In case the board fails to make the necessary arrangements the graduates can undoubtedly make their own selection of a school. Com.

The tuition of graduates residing in a joint sub-district should be paid by the board of education of the township in which they reside. Com.

The parents should not be required to pay the tuition and then collect it from their board of education, it should be paid by one board to the other. Com.

(4029-2) Sec. 2. [Township and county commencements.] The clerk of the township board of education shall provide for holding a township commencement at some place within the township, and shall appoint a teacher of the township to have charge of the same. At this commencement each successful applicant shall be required to deliver an oration or declamation, or read an essay. The board of county school examiners shall provide for the holding of a county commencement at such time and place as they may determine. At this commencement there shall be delivered an annual address provided by the county board of school examiners, at the conclusion of which a diploma shall be presented to each successful applicant who has complied with the provisions of this act. (92 v. 198; 91 v. 67; 89 v. 123.)

(4029-3) Sec. 3. [Tuition.] The tuition of such graduates as may attend any village or city high school of the county may be paid by the board of education of the special or township districts in which such pupils may reside. (89 v. 123.)

Ch. 9.

Schools and Attendance Enforced.

(4029-4) Sec. 4. [Compensation of examiners and contingent expenses.] The compensation of the county examiners for their official services and the necessary contingent expenses incident to examinations and commencements, shall be paid out of the county treasury in manner provided in section 4075 of the Revised Statutes; provided, however, that the expense of the township commencements shall be paid by the township board of education. (89 v. 123.)

Where special districts are situated in a township the expenses of the commencement should be divided between such districts and the township district in proportion to the number of graduates attending such commencement. Com.

County examiners should receive reasonable compensation for services actually rendered, this does not necessarily mean the same compensation as that received for county examinations. Com.

CHAPTER 10.

ENUMERATION, TREASURER AND CLERK.

SECTION.

4030. Yearly enumeration of school youth.
 4031. How enumeration of school youth taken; compensation.
 4032. Enumeration; return of.
 4033. (Repealed.)
 4034. Enumeration in joint sub-districts.
 4035. Clerk to transmit abstract of enumeration to county auditor.
 4036. When the clerk fails, auditor to act.
 4037. When county line divides original surveyed township.
 4038. When enumeration not taken, district not entitled to school funds.
 4039. Auditor to furnish abstract to state commissioner.
 4040. Duty of state commissioner when enumeration excessive.
 4041. Penalty for making fraudulent returns.
 4042. Treasurer of school funds.
 4043. Bond of treasurer, and duties of board in reference thereto.
 4044. Annual settlement by treasurer with county auditor.

SECTION.

4045. Penalty for failure to make such settlement.
 4046. (Repealed.)
 4047. When treasurer may receive or pay money.
 4048. Maximum amount of funds which treasurer may hold.
 4049. Treasurer to deliver money, etc., to successor.
 4050. Bond of clerk.
 4051. When order of clerk for teacher's pay illegal.
 4052. Annual statistical report of board of education; by whom prepared.
 4053. Publication of receipts and disbursements by clerk.
 4054. Clerk to deliver books, etc., to successor.
 4055. How treasurer and clerk to keep accounts.
 4056. Compensation of treasurer and clerk.

ENUMERATION.

Sec. 4030. [Yearly enumeration of school youth.] There shall be taken in each district, annually, during the two weeks ending on the fourth Saturday of May, an enumeration of all unmarried youth, noting sex, between six and twenty-one years of age, resident within the district, and not temporarily there, designating also the number between six and eight years of age, the number between eight and fourteen years of age, the number between fourteen and sixteen years of age, the number between sixteen and twenty-one years of age, and the number residing in the western reserve, the Virginia military district, the United States Military district, and in any original surveyed township or fractional township to which belongs section sixteen, or other land in lieu thereof, or any other lands for the use of public schools, or any interest in the proceeds of such lands. (93 v. 312; 87 v. 80; 85 v. 192; Rev. Stat. 1880; 71 v. 15, § 77.)

Enumeration in children's homes; see Sec. 930b, R. S.

At the annual enumeration of school youth as required by the provisions of Sec. 4030, the ages of such youth at the taking of the enumeration should be returned and not as of September 1st following. Att'y. Gen'l.

The youth enumerated must be actual residents of the district, living with parents or guardians or working to support themselves by their own labor; see Sec. 4013 and notes under same. Com.

Sec. 4031. [How enumeration of school youth taken; compensation for same.] Each person required or employed under this chapter to take such enumeration shall take an oath or affirmation

to take the same accurately and truly to the best of his skill and ability. When making return thereof to the proper officers, he shall accompany the same with a list of the names of all the youth so enumerated, noting the age of each, and with his affidavit duly certified that he has taken and returned the enumeration accurately and truly to the best of his knowledge and belief, and that such list contains the names of all the youth so enumerated and none others. The officers to whom such return is required to be made may administer such oath or affirmation and take and certify such affidavit, and shall keep in his office for the period of five years such report and list of names, and each person so taking and returning the enumeration shall be allowed by the proper board of education reasonable compensation for his services, which in subdistricts shall not exceed two dollars for each person authorized, required or appointed to perform the service. (1883, April 19; 80 v. 192; Rev. Stat. 1880; 71 v. 15, § 77.)

Sec. 4032. [Enumeration; return of.] The director of each subdistrict shall take the enumeration of his subdistrict and return the same to the clerk of the board of education in the manner prescribed in this chapter. (89 v. 97; 70 v. 195, § 78.)

Sec. 4033. (Repealed, 90 v. 76.)

Sec. 4034. [Enumeration in joint subdistricts.] The enumeration of the joint subdistricts shall be taken by the director of the joint subdistrict in which the school house of the subdistrict is situated. He shall designate in his report to the clerk the number of youth residing in the respective fractions of townships of which the subdistrict is composed; and the clerk, if such subdistrict is composed of parts of two or more counties, shall transmit a certified copy thereof to the auditor of each county having territory within the subdistrict. (89 v. 97; 70 v. 195, § 34; 71 v. 15, § 77; 72 v. 63, § 36.)

Where a joint sub-district is situated in two or more counties the auditor of the county in which the school house of the district is located does not return the enumeration for the entire joint sub-district, but only that portion of the same that is in his county, the other auditor or auditors making returns of the youth living in their counties. Com.

Sec. 4035. [Clerk to transmit abstract of enumeration to county auditor.] The clerk of each board shall, annually, on or before the first Saturday in August, make, and transmit to the county auditor, an abstract of the enumeration by this chapter required to be returned to him, according to the form prescribed by the commissioner of common schools, with an oath or affirmation indorsed thereon that it is a correct abstract of the returns made to him under oath or affirmation; and the oath or affirmation of the clerk may be administered and certified by any member of the board of education, or by the county auditor. (1888, April 11: 85 v. 192, 193; Rev. Stat. 1880; 70 v. 195, § 79.)

Sec. 4036. [When the clerk fails, auditor to act.] If the clerk of any district fail to transmit such abstract of enumeration on or before the first Saturday in August the auditor shall at once demand the same from such clerk; and in case the enumeration has not been taken as required by this chapter, or the abstract required be not furnished without delay, the auditor shall employ competent persons to take such enumeration, who shall be subject to the legal requirements already specified, except that the return shall be made directly to the auditor, who may administer to each person employed the oath or affirmation required; and the auditor shall allow the persons employed by him a reasonable compensation, to be paid out of the general county fund, and shall proceed to recover the amounts so paid in civil action before any court having competent jurisdiction, in the name of the state, against such clerk on his bond, and the amount so collected shall be paid into the general county fund. (1888, April 11; 85 v. 192, 193; Rev. Stat. 1880; 70 v. 195, § 80.)

* The returns should now be made on or before the first Saturday in June, as the time of taking the enumeration was changed from July to May without changing the time fixed for making returns. Com.

4037. [When county line divides original surveyed township.] If parts of an original surveyed township or fractional township are situate in two counties, the auditor of the county in which the smallest part is situate shall, so soon as the abstracts of enumeration are received by him from the clerks of the boards of education, certify to the auditor of the county in which the largest part is situate the enumeration of youth residing in the part of the township situate in his county; if parts of such township or fractional township are situate in more than two counties, like certificates of enumeration shall be transmitted to the auditor of the county containing the greatest relative portion of such township, by the auditors of the other counties containing portions thereof; when it is uncertain which county contains the greatest relative portion of such township, such certificates shall be transmitted to the auditor of the oldest county, by the other auditor or auditors; and if the land granted by congress to such township or fractional township for the support of public schools has been sold, the auditor to whom such certificates are transmitted shall notify the auditor of state, without delay, that such enumeration has been certified to him. (70 v. 195, §§ 121, 130.)

This section has nothing whatever to do with the enumeration returned by county auditors to the state commissioner of common schools. Com.

Sec. 4038. [When enumeration not taken, district not entitled to school funds.] If an enumeration of the youth of a district be not taken and returned in any year, such district shall not be entitled to receive any portion of the school funds distributable in that year on the basis

Ch. 10.

Enumeration, Treasurer and Clerk.

of enumeration; and if such loss to a district occur through the failure of the clerk of the board of education of the district to perform the duty required of him by either section *four thousand and thirty-two*, or *four thousand and thirty-five*, he shall be liable to the district for the loss, which may be recovered in an action in the name of the state; and the money so recovered shall be paid into the county treasury, and apportioned in the same manner as the school funds so lost would have been apportioned. (70 v. 195, §§ 120, 124.)

Sec. 4039. [Auditor to furnish abstract to state commissioner.]

The auditor of each county shall make, and transmit to the state commissioner of common schools, on or before the third Saturday in August, in each year, on blanks to be furnished by the commissioner, an abstract of the enumeration returns made to him, duly certified. (1888, April 11; 85 v. 192, 193; Rev. Stat. 1880; 70 v. 195, § 81.)

The county auditor should be very careful to return only the youth living within the boundaries of the county. for enumeration of joint sub-districts, see Sec. 4034 and note thereunder. Com.

Sec. 4040. [Duty of state commissioner when enumeration excessive, etc.] When the state commissioner of common schools on examination of the enumeration returns of any district, is of opinion that the enumeration is excessive in number, or in any other way incorrect, he may require the same to be retaken and returned, and if he think it necessary he may for this purpose appoint persons to perform the service, who shall take the same oath, perform the same duties, and receive the same compensation, out of the same funds, as the person or persons who took the enumeration in the first instance, and the school fund distributable in proportion to enumeration shall be distributed upon the corrected returns. (70 v. 195, § 75.)

Sec. 4041. [Penalty for making fraudulent returns.] An officer through whose hands the enumeration required by this chapter to be returned passes, who, by percentage or otherwise, adds to or takes from the number actually enumerated, shall be deemed guilty of a misdemeanor, and, upon conviction of such offense, shall be fined in any sum not less than five nor more than one thousand dollars, or imprisoned in the county jail not less than ten nor more than thirty days, at the discretion of the court. (70 v. 175, § 75.)

TREASURER AND CLERK.

Sec. 4042. [Treasurer of school funds.] In each city district the treasurer of the city funds shall be ex-officio treasurer of the school funds; but if the county treasurer is treasurer of the city funds the board of education may appoint one of its members treasurer, who shall not receive any compensation for his services; in each township district the

treasurer of the township funds shall be ex-officio treasurer of the school funds; and in each village and special district the board of education shall choose its own treasurer, whose term of office shall be for one year, beginning on the first day of September. (1888, April 11; 85 v. 192, 193; Rev. Stat. 1880; 70 v. 24, § 44.)

Sec. 21. The state, any county, township, municipal corporation, or school board, shall not be precluded by the illegal loan or deposit by any officer or agent of public money, funds, property, bonds, securities, or assets, belonging to it, from suing for and recovering the same; and such suit shall not be held to be an adoption or satisfaction of such illegal transaction.

Township treasurer shall be present at the regular meeting of the township trustees in March; see Sec. 1458, R. S.

Embezzlement of school funds, penalty; see sections 6841, 6846, R. S.

What is prima facie evidence of embezzlement by public officers; see Sec. 7200, R. S.

Township trustees have no authority to release a treasurer from his liability for any portion of the school fund belonging to the township. 13 O. 495.

A city treasurer, being ex-officio treasurer of the school fund, for which he cannot have compensation (Sec 4056), and is required to serve until his successor is qualified, his successor qualified as city treasurer, but failed for five months to qualify as school treasurer, during which time the school board refused to release him and required him to continue, which he did, held, he cannot have compensation. If he was city treasurer during that time the law denies compensation; if he was not, his holding the school funds was an unlawful act. 9 B. 182.

Sec. 4043. [Bond of treasurer; additional sureties or new bond.]

Each school district treasurer or county treasurer who is ex officio treasurer of a school district, shall, before entering upon the duties of his office, execute a bond, with sufficient sureties, in double the probable amount of school funds that may come into his hands, payable to the state of Ohio, to be approved by the board of education, conditioned for the faithful disbursement, according to law, of all such funds which come into his hands; and he may at any time thereafter be required to give additional sureties on his accepted bond or to execute a new bond with sufficient sureties to the approval of the board of education whenever the said board of education deem it necessary, and if said treasurer shall fail for ten days after service of notice in writing of such requisition, to give bond or additional sureties as aforesaid as required by said board, the office shall be considered and declared vacant and shall be filled as in other cases. Every bond, when so executed and approved, shall be filed with the clerk of the board of education of the district, and recorded, who shall cause a certified copy thereof or the names of additional sureties, to be filed with the county auditor without delay, and such board at the time of the approval of any bond or sureties, shall require the treasurer of the school funds to produce all money, bonds or other securities in his hands as such treasurer, and the same shall be then counted by the board or a committee thereof, in the presence of the clerk of the board, who shall thereupon enter upon the records of the board, a certificate, setting forth the exact amount of money or securities so found in the hands of such treasurer, which record shall be signed by the president

Ch. 10.

Enumeration, Treasurer and Clerk.

and clerk of the board and shall be prima facie evidence that the amount therein stated was actually in the treasury at that date. (92 v. 210; 70 v. 195, §§ 46, 82; 76 v. 16, § 1.)

Release of surety of treasurer of school fund; see Sec. 5841, R. S.

Upon release of surety new bond to be required by board of education; see Sec. 5842, R. S.

In an action against a surety on a township treasurer's school bond, conditioned for the faithful disbursement of school moneys, a judgment for defendant will not be reversed, when the pleadings and evidence show a default by the treasurer only as to "township funds" in general items, without specifying that any part thereof was school money. 16 O. S., 17.

See 13 O., 495, under Sec. 4042.

A treasurer who is his own successor must give a new bond for the term to which he is re-elected. His former bondsmen will not be liable for defaults committed within the term for which he is re-elected. Their liability ceased with the expiration of his former term of office. 7 O., 2d pt., 221.

In case the treasurer of a city district fails to give bond, his office may be declared vacant by the city council. See section 1740, R. S. Should a treasurer present his bond after the time prescribed for tendering it, and should such bond be accepted, would undoubtedly be held good. 25 O. S., 567.

Bonds must be accepted within a reasonable time. 31 O. S., 451.

A permit by a board of education to its treasurer to use public moneys in his business on interest and with security for its return is an illegal contract and the sureties may set up the illegality. The board cannot enforce a promise whose consideration is the illegal loan. 33 O. S., 321.

A school district treasurer's bond to disburse all such funds as come to his hands, includes drafts and certificates of deposit taken by him as cash, which would have been paid on presentation. 39 O. S., 635.

Sec. 4044. [Annual settlement by treasurer with county auditor.]

The treasurer shall, annually, within the first ten days of September, settle with the county auditor for the preceding school year, and for that purpose shall make a certified statement showing the amount of money received, from whom, and on what account, and the amount paid out, and for what purpose; he shall produce vouchers for all payments made; if the auditor, on examination, find the statement and vouchers to be correct, he shall give the treasurer a certificate of the fact, which shall, prima facie, be a discharge of the treasurer for the money paid; and for making such settlement he shall be entitled to receive the sum of one dollar, and also five cents per mile for traveling to and from the county seat, to be paid out of the county treasury, on the order of the county auditor. When the treasurer's term begins on the first day of September the annual settlement shall be made by the outgoing treasurer. (92 v. 58; 85 v. 192, 194; Rev. Stat. 1880; 71 v. 9, § 47.)

If it is evident to the county auditor that the school moneys have been illegally paid out, as they would be if paid to any member of a board of education on any contract with such board, or as an employee thereof, it is his duty to refuse the treasurer credit for the same. If moneys have been paid from the wrong fund, as from the school fund, when the law says it must be township fund, the auditor must not allow credit to such orders. He should insist on their correction by the board, or correct them himself by proper debit and credit. No voucher should be received by the auditor which he has reason to believe a court of law would reject. No paper is a voucher for the payment of money to A, which has not A's receipt on it, or accompanying it. An order properly made out, but merely marked "paid" by the treasurer, is not a receipt. See section 4047. Com.

Sec. 4045. [Penalty for failure to make such settlement.] If the treasurer of any school district wilfully or negligently fail to make such

annual settlement within the time prescribed in the preceding section, he shall be liable to pay a fine of fifty dollars, to be recovered in a civil action in the name of the state; which amount, when collected, shall be paid into the county treasury, and shall be applied to the use of common schools in his district; and the county auditor shall proceed forthwith, in case of such failure, to recover the penalty, by suit against such treasurer, before any justice of the peace of his county. (71 v. 9, § 47.)

Cited, 2 C. C., 475; 9 C. C., 13; 2 O. D., 152.

Sec. 4046. (Repealed April 11, 1888; 85 v. 192, 196.)

Sec. 4047. [When treasurer may receive or pay money.] No treasurer of a school district, except in cases otherwise provided for in this title, shall pay out any school money except on an order signed by the president and countersigned by the clerk of the board of education; and no money shall be paid to the treasurer of a district, other than that received from the county treasurer, except upon the order of the clerk of the board, who shall report the amount of such miscellaneous receipts to the county auditor each year, immediately preceding such treasurer's settlement with the auditor. (71 v. 15, § 83.)

A board of education has capacity to sue its treasurer for money received and not accounted for. The remedy is not limited to an action on the bond, but may be for money had and received. 51 O. S., 115.

Orders drawn by a board of education on its treasurer do not require a revenue stamp. Com.

The treasurer should not pay an order for what he believes to be an illegal object, until he can consult with other members of the board, and have the question fully investigated. A man of discretion is supposed to be chosen to this, as to other offices, that the chances for discovering errors and fraud may be multiplied. Com.

Sec. 4048. [Maximum amount of funds which treasurer may hold.] The auditor shall in no case permit the treasurer of a school district to have in his hands, at any time, an amount of school funds over one-half the amount of the penalty in the bond of the treasurer; and before giving such treasurer any order for school funds, he shall require the treasurer to file with him a statement, to be furnished by the clerk of the board of education whenever necessary for the purpose, showing the amount of funds in the treasurer's hands according to the clerk's books. (70 v. 195, § 84.)

Payment of school treasurers; see Sec. 1122, R. S.

Sec. 4049. [Treasurer to deliver money, etc., to successor.] At the expiration of his term of service each treasurer shall deliver to his successor in office all books, papers, money, and other property in his hands belonging to the district, and take duplicate receipts of his successor therefor, one of which he shall deposit with the clerk of the board of education within three days thereafter. (1888, April 11: 85 v. 192, 194; Rev. Stat. 1880; 71 v. 9, § 47.)

Penalty for failure or refusal to pay over public money; see Sec. 7290, R. S.

Ch. 10.

Enumeration, Treasurer and Clerk.

Sec. 4050. [Bond of clerk.] The clerk of each board of education shall execute a bond, in an amount and with surety to be approved by the board, payable to the state of Ohio, conditioned that he shall perform faithfully all the official duties required of him; which bond shall be deposited with the president of the board, and a copy thereof, certified by the president of the board, shall be filed with the county auditor. (70 v. 195, § 45.)

Township clerk is authorized to administer oaths connected with school affairs; see Sec. 1505, R. S.

Sec. 4051. [When orders of clerk for teachers' pay illegal.] It shall be unlawful for the clerk of a board to draw an order on the treasurer for the payment of a teacher for services until the teacher files with him such reports as are required by the state commissioner of common schools and the board of education, a legal certificate of qualification, or a true copy thereof, covering the entire time of the service, and a statement of the branches taught; but orders may be drawn for the payment of special teachers of drawing, painting, penmanship, music, gymnastics, or a foreign language, on presentation of a certificate to the clerk, signed by a majority of the examiners, and the filing with him of a true copy thereof, covering the time for which the special teacher has been employed, and the specialty taught. (70 v. 195, §§ 53, 94.)

See sections 4018, 4074.

The provision in the act of March 18, 1864, that no person shall be "employed" as a teacher unless he has first obtained the certificate required by law, does not render invalid a contract for employment made with the teacher before he obtains the requisite certificate, provided he obtain it before entering upon the duties of his employment. 22 O. S., 194.

See 2 C. C., 475, under 4018.

See 12 C. C., 247, under Sec. 4074.

An order drawn by the clerk of the board of education, under the statute, in favor of a third person or bearer, on the township treasurer, is not negotiable, and a purchaser takes such order subject to the same defenses that could be made against it in the hands of the payee. 22 O. S., 144.

The written acceptance of such order by the predecessor of the township treasurer, to whom it was presented for payment, imposes no greater obligation on the latter to pay the same, than he would have been under had it been presented without such acceptance. Id.

Not only the teacher, but each member of the board of education is severally liable for the repayment of money paid under their vote and order, to a teacher who does not hold a certificate covering each and every branch taught. The same rule applies to all payments made to teachers before reports required by law, by the State Commissioner of Common Schools, and by the board of education, have been made. Com.

An assistant teacher who has not a legal certificate cannot be paid through an order drawn in favor of another teacher who had a certificate, nor can any uncertificated teacher, who is employed as a substitute, receive pay through another teacher. Com.

The term "entire time of service," as used in this section, refers to the time of service covered by the order to be drawn, not to the entire time of employment. Com.

Sec. 4052. [Annual statistical report of board of education; by whom prepared.] The clerk of each board shall prepare the annual report of the receipts and expenditures of school money, and the statistical statement in reference to the schools, required of the board by section forty hundred and fifty-seven, and transmit the same to the county auditor on or before the first day of September; provided, that in each school

district having a superintendent of schools, except city districts of the first class, the annual report, except the receipts and expenditures of money, shall be made by the superintendent. (1888, April 11: 85 v. 192, 194; Rev. Stat. 1880; 70 v. 195, § 82.)

Penalty for not making report; see Sec. 4061, 4062.

The board of education should see that the reports required by this section are filed before allowing compensation to the clerk for his services. Com.

Sec. 4053. [Publication of receipts and disbursements by clerk.]

The board of education of each district, except city districts of the first class, shall require the clerk of the board annually, ten days prior to the election for members of the board and directors of subdistricts, to prepare, and post at the place or places of holding such elections, or publish in some newspaper of general circulation in the district, an itemized statement of all money received and disbursed by the treasurer of the board within the school year last preceding. (70 v. 195, § 66.)

Sec. 4054. [Clerk to deliver books, etc., to successor.] Each clerk shall, at the expiration of his term of office, deliver to his successor all books and papers in his hands relating to the affairs of his district, including certificates, and copies thereof, and reports of school statistics, filed by teachers. (70 v. 195, § 84.)

Sec. 4055. [How treasurer and clerk to keep accounts.] The auditor of each county shall furnish to the clerk and treasurer of each school district in his county a suitable blank book, made according to the form prescribed by the commissioner of common schools, in which each shall keep an account of the school funds of his district; the clerk's account shall show the amounts certified by the county auditor to be due the district, all sums paid to the treasurer from other sources on his order, and all orders drawn by him on the treasurer, and upon what funds and for what purposes drawn; the treasurer's accounts shall show the amounts received from the county treasurer, all sums received from other sources on the order of the clerk, and the amounts paid out, and from what funds and for what purposes paid; and a separate account of each fund shall be kept, and each account shall be balanced at the close of the school year, and the balance in the treasurer's hands belonging to each fund shown. (70 v. 195; § 84.)

Sec. 6846. A member of the council or board of aldermen of any municipal corporation, or an officer, agent, clerk, or servant, of such corporation, or of any board or department thereof, or any officer, agent, clerk, or servant, of any board of education, who, knowingly, diverts, appropriates, or applies, any funds, or a part of any fund, raised under any law, by taxation or otherwise, to any other use or purpose than that for which it was raised or appropriated, or who, knowingly, diverts, appropriates, or applies, any money borrowed, or any bond of the corporation, or any part of the proceeds of such bond, to any other use or purpose than that for which such loan was made, or bond issued, shall be deemed guilty of embezzling the amount so diverted, appropriated, or applied, and punished accordingly.

Sec. 4056. [Compensation of treasurer and clerk.] The board of education may fix the compensation of clerk and treasurer; the allowance made to the treasurer shall not exceed one per centum of the money disbursed by him on orders of the board; but the treasurers of township districts shall be allowed as compensation one per centum on all school funds disbursed by them; and both clerks and treasurers shall be paid out of the contingent fund, on the order of the board of education, but treasurers of city districts shall not be allowed compensation for disbursing the school funds; but before such order for pay of treasurer shall be made he shall present to the board the auditor's certificate of discharge provided for in section four thousand and forty-four, Revised Statutes, and before such order for pay of clerk shall be made he shall present to the board a statement, officially signed and certified by the auditor, that he has returned all the reports of statistics for that year required by this title. (1888, April 11: 85 v. 192, 194; 80 v. 95; Rev. Stat. 1880; 70 v. 195, § 49.)

The compensation provided for the township clerk under this section is not to be included in the one hundred and fifty dollar limit of Sec. 1531. Attorney General.

No compensation should be allowed to clerk or treasurer until after all reports required by law are filed. Com.



CHAPTER 11.

REPORTS.

SECTION.

4057. Annual report by board of education; its contents.
 4058. In what form to be made, etc.
 4059. Reports by superintendents and teachers.
 4060. Duties of county auditor as to school statistics, etc.

SECTION.

4061. Penalties against auditor and clerk.
 4062. When auditor to appoint person to make report.
 4063. Further penalties against auditor.
 4064. Compensation of auditor.

Sec. 4057. [Annual report of board of education; its contents.]

The board of education of each district shall make a report to the county auditor, on or before the first day of September in each year, containing a statement of the receipts and expenditures of the board, the number of schools sustained, the length of time such schools were sustained, the enrollment of pupils, the average monthly enrollment, and average daily attendance, the number of teachers employed, and their salaries, the number of school houses and school rooms, and such other items as the commissioner of common schools may require. (1888, April 11: 85 v. 192, 195; Rev. Stat. 1880; 70 v. 195, § 75; S. & C. 1353.)

Penalty for not making report, see Secs. 4061 and 4062.

Sec. 4058. [In what form to be made, etc.] The report shall be made on blanks which shall be furnished by the commissioner of common schools to the auditor of each county, and by the auditor to each school clerk in his county; and each board of education, or officer or employe thereof, or other school officer in any district or county, shall, whenever the commissioner so requires, report to him direct, upon such blanks as he shall furnish, any statements or items of information that he may deem important or necessary. (70 v. 195, § 75.)

Sec. 4059. [Reports by superintendents and teachers.] Boards of education shall require all teachers and superintendents to keep the school records in such manner that they may be enabled to report annually to the county auditor, as required by the provisions of this title, and may withhold the pay of such teachers as fail to file with the clerk the reports required of them; they may require superintendents to report each year such matters as they deem important or necessary for information in regard to the management and conduct of the schools, and to make such suggestions and recommendations as they may deem advisable relative to methods of instruction, school management, or other matters of educational interest; and the board of each city district of the first class shall prepare and publish, annually, a report of the condition and administration of the schools under its charge, and include therein a complete exhibit of the financial affairs of the district. (70 v. 195, § 76.)

Ch. 11.

Reports.

All blanks required by board of education, superintendents and teachers in making the reports required by law are sent to the county auditors to be distributed by them to the clerks of the boards of education; see Sec. 4058. Com.

Sec. 4060. [Duties of county auditor as to school statistics, etc.]

The auditor of each county shall, on or before the twentieth day of September, annually, prepare, and transmit to the commissioner of common schools an abstract of all the returns of school statistics made to him from the several districts in his county, according to the form prescribed by the commissioner, and a statement of the condition of the institute fund, and such other facts relating to schools and school funds as the commissioner may require; he shall also cause to be distributed all such circulars, blanks, and other papers, including school laws and documents, in the several school districts in the county, as the commissioner may lawfully require; and if the auditor neglect to prepare and return any of the abstracts or reports herein required the county commissioners shall withhold from him all compensation for his services under this title. (1888, April 11: 85 v. 192, 195; Rev. Stat. 1880; 70 v. 195, § 123; S. & S. 705.)

Sec. 4061. [Penalties against auditor and clerk.] The auditor shall also be liable on his bond for any such neglect, in a sum not less than three hundred nor more than one thousand dollars, on complaint of the commissioner of common schools; and if the clerk of the board of education of any district fail to make the annual returns of school statistics required by this title, to the county auditor, he shall be liable on his bond in a sum not less than fifty nor more than three hundred dollars, on complaint of the county auditor, or of the board of education, to be recovered in a civil action in the name of the state, and when collected to be paid into the county treasury, and applied to the use of common schools in such district. (70 v. 195, § 123; S. & S. 706.)

Sec. 4062. [When auditor to appoint person to make report.] Upon the neglect or failure of the clerk of the board of education of any district to make the reports required in this title, and by the time specified, the county auditor shall appoint some suitable person, resident of the district, to make such reports, who shall receive the same compensation therefor, and in the same manner, as is allowed by law for like services. (70 v. 195, § 123; S. & S. 706.)

Sec. 4063. [Further penalties against auditor.] A county auditor who wilfully or negligently fails, in any year, to transmit to the commissioner of common schools the abstract of enumeration required by section forty hundred and thirty-nine, or to perform any other duty required of him under this title, shall be liable on his bond to the extent of twice the sum lost to the school districts of his county in consequence of such failure, which sum shall be re-

covered in a civil action against him, on his bond, in the name of the state, before any court of competent jurisdiction; and the money so recovered shall be paid into the county treasury, for the benefit of such districts, and apportioned in the same manner as the school funds so lost would have been apportioned. (70 v. 195, §§ 81, 124.)

Sec. 4064. [Compensation of auditor.] The commissioners of each county shall allow the county auditor, annually, a reasonable compensation for his services under this title, not to exceed five dollars for each city, village, special, and township school district in his county, to be paid out of the county treasury; but before such allowance shall be made for any year the auditor shall present to the commissioners a statement, officially certified and signed by the commissioner of common schools, that he has transmitted to the commissioner all reports and returns of statistics for that year required by this title. (70 v. 195, § 125.)

CHAPTER 12.

BOARDS OF EXAMINERS.

SECTION.	SECTION.
4065. State board; their appointment; terms; vacancies.	4075. Compensation and expenses of board.
4066. Power to issue three grades of life certificate; record thereof.	4076. Annual report of clerk, and his bond.
4067. Effect thereof; may be revoked for cause.	4077. Boards of city districts of first class.
4068. Examination fees; their disposition; compensation of members; stationery.	4078. Standard of qualification for teachers; examinations of schools; law governing board in examining teachers; special examiners; their oath; duty of school superintendents.
4069. County boards; appointment, term, and vacancies; removal; notice of appointments; disqualifications.	4079. Organization of board; bond of clerk.
4070. President and clerk of board of county school examiners; duties of clerk.	4080. Meetings for examination; notice.
4071. Meetings of board, and fee for examination.	4081. Examination fee; granting and revocation of certificates; investigation of teachers.
4071a. Uniform system of examinations.	4081-1. Granting of life certificates in Cincinnati.
4072. Disposition of fees.	4082. Compensation of examiners; incidental expenses.
4073. Granting and revocation of certificates; investigation of teachers; expenses.	4083. City and village examiner; duties of clerk; disposition of fees.
4074. Certificate a prerequisite to employment of teachers; certificate to teach special studies; physiology and hygiene.	4084. Boards of school examiners for city districts, second class, and village districts.
	4085. Who ineligible as examiner.

School examiners are not officers under Art. II, Sec. 20, of the Constitution. 4 C. D., 540. Making, changing or altering a teacher's certificate constitutes forgery; see Sec. 7091, R. S.

STATE BOARD OF EXAMINERS.

Sec. 4065. [State board; appointment; term; vacancies.] There shall be a state board of examiners, which shall consist of five competent persons, resident[s] of the state, to be appointed by the state commissioner of common schools; not more than three of whom shall be long to the same political party. The term of office of such examiners shall be five years; the term of one of the examiners shall expire on the 31st day of August, each year, and when one of which shall expire on the 31st of August every year, and when a vacancy occurs in the board, whether from expiration of the term of office, refusal to serve, or other cause, the commissioner shall fill the same by appointment for the full or unexpired term, as the case demands. (1888, April 16; 85 v. 330; 81 v. 95; Rev. Stat., 1880; 70 v. 195, § 85; S. & S., 709.)

Sec. 4066. [Power to issue three grades of life certificates; record thereof.] The board thus constituted may issue three grades of life certificates to such as are found to possess the requisite scholarship, and who exhibit satisfactory evidence of good moral character and of professional experience and ability; the certificates shall be for different grades of schools according to branches taught, and shall be valid in the schools specified therein. The clerk of the board shall keep a record of

the proceedings, showing the number, date and grade of each certificate, to whom granted, and for what branches of study, and shall report such statistics to the commissioner, annually, on or before the 31st day of August. (1888, April 16: 85 v. 330; 78 v. 39; Rev. Stat., 1880; 70 v. 195, § 86; S. & S., 709.)

The state board of examiners issues the following certificates: High school life, common school life and special life. High school life certificates are unlimited, common school life and special life are limited to the branches of study specified therein. Com.

Sec. 4067. [Effect thereof; may be revoked for cause.] All certificates issued by such board shall be countersigned by the commissioner of common schools; and such certificates shall supersede the necessity of any and all other examinations of the persons holding them, by any board of examiners, and shall be valid in any school district in the state, unless revoked by the state board for good cause. (70 v. 195, § 87; S. & S., 709.)

Sec. 4068. [Examination fees; their disposition; compensation of members; stationery.] Each applicant for a certificate shall pay to the board of examiners a fee of five dollars; and the clerk of the board shall pay to the state treasurer, all fees received, and file with the state auditor a written statement of the amount. Each member of the board shall be entitled to receive five dollars for each day he is necessarily engaged in official service, and also six cents per mile each way for traveling from and to his place of residence, by the most direct route of public travel to and from the places of meetings of the board, to be paid out of the state treasury on the order of the state auditor; all books, blanks and stationery required by the board shall be furnished by the secretary of state. (1888, April 16; 85 v. 330; 82 v. 100; Rev. Stat., 1880; 70 v. 195, § 88; S. & S., 709.)

COUNTY EXAMINERS.

Examiners' duties as to graduation from sub-districts and special school districts, Sec. 4029-1.

For sections 4069, 4065, see S. & C. 1361, 1362.

Sec. 4069. [County boards; appointment, term, and vacancies; removals; notice of appointment; disqualifications.] There shall be a board of examiners for each county, which shall consist of three competent persons to be appointed by the probate judge. Two of such persons shall have had at least two years' experience as teachers, and shall be or shall have been within five years, actual teachers in properly recognized schools. Such persons shall be residents of the county for which they are appointed, and shall not be connected with, or interested in any normal school or school for the special education or training of persons, for teachers, or any other private school, or be employed as an

instructor in any institute in his own county. If an examiner becomes connected with, or interested in any such school, his office shall become vacant thereby. The term of office of such examiners shall be three years. The term of one of the examiners shall expire on the thirty-first day of August, each year; but the probate judge shall revoke the appointment of any examiner, upon satisfactory proof that he is inefficient, negligent, or guilty of immoral conduct. When a vacancy occurs in the board, whether from expiration of the term of office, refusal to serve, or other cause, the probate judge shall fill the same by appointment for the full or unexpired term, as the case demands, and within ten days after an appointment the probate judge shall report to the commissioner of common schools the name and appointee, and whether the appointment is for a full or unexpired term; and no person shall be appointed to the position, or exercise the office of state, county, city, or village examiner of teachers, who is agent of, or is interested in any book publishing or book selling firm, company or business. (88 v. 495; 85 v. 330; Rev. Stat., 1880; 70 v. 195, § 89.)

See Sec. 4085.

Art. II, Sec. 20, of the Constitution, does not apply to a member of a board of examiners of teachers. 4 C. D., 540.

All schools not supported, at least in part, by public funds are termed private schools. Com.

Who ineligible for county examiner; see Sec. 4085.

Sec. 4070. [President and clerk of board of county school examiners; duties of clerk.] The board shall organize by choosing from its members a president and clerk; the clerk shall keep a record of the proceedings, showing the number and date of each certificate issued, and to whom, for what term, and for what branches of study, and such other statistics relating to the examination and proceedings as the commissioner of common schools may require, and shall report such statistics to the commissioner annually on or before the first day of September; the clerk shall receive four dollars for each examination of sixty applicants or less, six dollars for each examination of more than sixty applicants and less than one hundred, eight dollars for each examination of one hundred applicants or more, to be paid out of the county treasury on the order of the county auditor; the board may make all needful rules and regulations for the proper discharge of their duty. (92 v. 215; 85 v. 192, 195; Rev. Stat. 1880; 70 v. 241, § 95.)

The prosecuting attorney is the legal adviser of county boards of examiners; see Sec. 1274, R. S.

Sec. 4071. [Meetings for examinations; majority's power; examination fee.] Each board shall fix upon the place and times for holding meetings for the examination of applicants for certificates, notice of which shall be published in two weekly newspapers of different political parties printed in the county, if there are two papers

thus published; if not, then a publication in one only is required; the meetings, of which there shall not be more than ten in any year, shall be held at such place in the county as will in the opinion of the board best accommodate the greatest number of applicants; a majority of the board may examine applicants and grant certificates; and as a condition of examining each applicant shall pay to the board a fee of fifty cents. (92 v. 215; 89 v. 245; 70 v. 195; §§ 90, 91.)

It seems that examiners have, in some cases, advertised meetings for the examination of candidates for, say, three years' certificates only. It is difficult to see the legality or expediency of such proceeding. Have not all candidates a right to appear at any of the public advertised meetings provided for by law? If one fails in a trial for a three-years' certificate, may he not be found qualified to receive a two-years' certificate without the trouble and expense of another journey and another fee? Com.

It has been decided by two or more common pleas courts of Ohio, "that the examination of the candidate, and determination to grant the certificate being official acts, can only be legally performed at a session of the board duly organized, and that the whole board, as such, is to decide regarding the qualifications of each applicant to teach each branch certified to." See also case of McCortle v. Bates, 29 O. S., 419, as quoted quite in full under section 3982. All its reasoning regarding boards of education applies equally to examining boards. Com.

Sec. 4071a. [Uniform system of examinations.] That the secretary of the state board of examiners and the state commissioner of common schools shall prepare a series of questions for each examination to be used in each county in the state of Ohio for the examination of teachers; and the state commissioner of common schools shall procure the printing of the same and distribute them to the clerks of the several boards of examiners of the several counties in the state. Said questions shall be forwarded in time to reach their destination at least two days before they are required for use. Said questions shall not be opened except in the presence of a majority of the examining board on the day and hour of examination. No county board of examiners shall use any question for examination of teachers not furnished as herein provided, unless by action of the board they may determine otherwise. Examinations under this act shall be held on the second and fourth Saturday of September, October, November, December, February, March, April, May and June, and nothing in this act shall be so construed as to prevent the several county boards from holding less than eighteen examinations a year. (90 v. 300.)

The use of the questions prepared under this law is left to the option of each county board of examiners. If the questions are used, then the dates of holding meetings must be those prescribed in this act. If they are not used, then the dates may be fixed by the board of examiners as provided in section 4071. No appropriation was ever made to carry out the provisions of section 4071a, and it has never been enforced. Com.

Sec. 4072. [Disposition of fees.] The clerk of the board shall pay to the county treasurer, quarterly, all fees received, and file with the county auditor a written statement of the amount, and of the

number of applicants, male and female, examined during the quarter; and such money shall be set apart for the support of teachers's institutes, and applied as provided in chapter thirteen. (Passed 1886, March 25; took effect Sept. 1, 1886; 83 v. 40; Rev. Stat. 1880; 70 v. 195, § 91; S. & S., 706.)

Sec. 4073. [Granting and revocation of certificates; investigation of teachers; expenses.] The board may grant certificates for one, two and three years from the day of examination, which shall be valid in the county wherein they are issued, except in city and village districts that have boards of examiners, in which they shall not be valid; that in all school districts in the state of Ohio not having a special board of examiners and situated in two or more counties, teachers' certificates obtained from either county so situated shall be held valid in such districts; and the examiners may grant certificates for five years to such applicants as in addition to the necessary qualifications have been for three years next preceding their application engaged in teaching, twelve months of which experience shall have been in one place; and such certificates for five years shall be renewable upon the same condition, but without examination, at the discretion of the examining board; and the examiners may grant certificates for eight years from the date of examination, to such applicants as, in addition to the necessary qualifications, hold or have held a certificate for five years, and have been for three years next preceding their application engaged in teaching, eighteen months of which experience shall have been in one place; and the applicants for such certificates for eight years, in addition to the other qualifications, shall be required to pass a satisfactory examination in botany, algebra, natural philosophy and English literature; and such certificate for eight years shall be renewable upon the same conditions, but without examination, at the discretion of the examining board; and if at any time the recipient of a certificate be found intemperate, immoral, incompetent, or negligent, the examiners, or any two of them, may revoke the certificate; but such revocation shall not prevent a teacher from receiving pay for services previously rendered; and when any recipient of a certificate is charged with intemperance, or other immorality, the examining board shall have power to send for witnesses and examine them on oath or affirmation touching the matter under investigation. The fees and other expenses of such trial shall be certified to the county auditor by the clerk and president of the examining board, and be paid out of the county treasury upon the order of the auditor. (93 v. 115; 92 v. 121; 85 v. 330, 331; 81 v. 55; 79 v. 83; Rev. Stat. 1880; 70 v. 195, § 92; S. & S., 707.)

A teacher's certificate issued by a county superintendent of public instruction or other officer of state, county, or municipality comes within the exemption provided by section 17 of the act, and does not require a stamp. These certificates, given under regulations

adopted in connection with public schools, are held to be for governmental purposes rather than for private use. Commissioner of Internal Revenue.

The revocation of a teacher's certificate by the county school examiners for intemperance and immorality is not reviewable by the courts. Hence that board will not be compelled by mandamus to sign a bill of exceptions setting out the evidence on the trial to revoke. 1 N. P., 151.

The revocation of a certificate is not strictly a judicial proceeding. The law which clothes the boards of examiners with discretionary power, will protect them in the proper use of it. They cannot, of course, be mulcted in damages nor removed from office, for refusing to grant a certificate, nor for revoking a certificate, in the exercise of this discretion. If malice or other undue motive enter into the transaction, however, the candidate has his remedy in the courts, and the probate judge may remove any member for such cause, as a malfeasance in office—an immorality—one of the causes enumerated in the law. Com.

Notice of revocation should at least be given to the boards of education concerned. A person cannot draw pay after his certificate is revoked. Com.

The board may grant certificates of five grades only, and since the statute uses the language, "from the day of examination," a certificate cannot be antedated. Com.

An official trust cannot be delegated. See III Central Law Journal, p. 472. The board has no authority, therefore, to appoint a substitute to perform the duties of any of its members. A certificate depending on the signature of such substitute for its validity, is worthless. As all citizens are bound to know the law, so candidates and school authorities are bound to know who are legal, or, at least, *de facto* public officers. Com.

Sec. 4074. [Certificate a prerequisite to employment of teachers; certificate to teach special studies; physiology and hygiene.] No person shall be employed as teacher in a common school who has not obtained from a board of examiners, having competent jurisdiction, a certificate of good moral character, and that he or she is qualified to teach orthography, reading, writing, arithmetic, geography, English grammar, the history of the United States, including civil government, and possesses an adequate knowledge of the theory and practice of teaching, and, if required to teach other branches, that he or she has requisite qualifications; but persons who desire or are expected to teach only special studies, such as music, drawing, painting, penmanship, gymnastics, German or French, or any one of them, or the primary department in any graded school, may be examined in regard to such study or studies above mentioned, or with special reference to their qualifications to teach in such primary department only, and having obtained a certificate of qualification therein, and of good moral character, may be employed to teach such study or studies, or in such primary department; provided, that after January 1, 1889, no person shall be employed as a teacher in any common school, who has not obtained from such board of examiners a certificate that he or she is qualified to teach physiology and hygiene. (92 v. 36; 85 v. 330, 331; 85 v. 93; 79 v. 70; Rev. Stat. 1880; 71 v. 107, § 93; S. & S. 707.)

See Secs. 4018, 4051.

For "an act requiring instruction as to the effect of alcoholic drinks and narcotics on the human system, in the public schools," see Sec. 4020-24.

Qualifications, etc., of teachers of day schools for deaf children; see Sec. 4000-13.

The above section forbidding the employment of a teacher who has no certificate was not intended to guard against a contract but against incompetency; hence, if the teacher gets his certificate after the contract, but before entering on his duties, it is sufficient; the latter is the employment. 22 O. S., 194.

In Illinois, a certificate was not obtained till the middle of the term. A new contract was entered into at that time to pay the teacher double wages for the rest of the term. This was considered an attempt to do indirectly what there was no power to do directly; and therefore the contract was held void. 71 Ill., 532.

A person began teaching under a contract. He taught three weeks; then obtained a certificate and made a written contract to run three months from the time he began teaching. Held, that he was entitled to wages after certificate was obtained, but to no pay for the previous three weeks. 20 Minn., 72.

No money can be legally drawn for teaching a day without a certificate, and to receive public money illegally is a crime under Secs. 6841 and 6846. Com.

The board of education of G., at a regular meeting, tendered C. the election as superintendent of a school in which branches other than those enumerated in the certificate issued to C. by the board of school examiners, were taught. C. accepted the employment tendered, and entered upon its duties. Held, that this constituted a valid contract, and in the absence of proof, other teachers being employed in the school, no presumption arises that C. actually taught branches not enumerated in his certificate. 12 C C., 247.

The board may, in certain cases, call in the aid of a specialist to examine a candidate for them in specific branches. But the official mind, as in cases at the bar, the "judicial mind," must itself be satisfied—in this case by the testimony of the expert—that the candidate is qualified in each branch, and the board must certify to this. Com.

As to penalty for bribing or attempting to bribe an officer, see Sec. 6900.

Teachers in schools at children's homes and in kindergarten schools, supported by public funds, must hold certificates. Com.

Resolved, That the primary certificate should be a professional certificate and should be granted only to those who hold a regular teacher's certificate, and who show themselves skilled in primary teaching, and that the examination should be based principally on theory and practice of teaching as related to primary work.—Passed by the State Association of County Examiners.

Sec. 4075. [Compensation and expenses of board.] Each member of the board shall be entitled to receive ten dollars for each examination of sixty applicants or less, fourteen dollars for each examination of more than sixty applicants and less than one hundred, eighteen dollars for each examination of one hundred applicants or more, to be paid out of the county treasury on the order of the county auditor; all books, blanks, and stationery required by the board shall be furnished by the county auditor; the board may contract for the use of suitable rooms in which to conduct examinations, procure fuel and light, and employ janitors to take charge of the rooms and keep them in order, and the expenses so incurred, together with the cost of advertising required by section 4071, shall be paid out of the county treasury on orders of the county auditor, who shall issue such orders upon the certificate of the president of the board, countersigned by the clerk. (92 v. 216; 83 v. 40; Rev. Stat. 1880; 70 v. 241, § 95; S. & S. 707.)

Sec. 4076. [Annual report of clerk, and his bond.] The clerk of the board shall prepare, and forward to the commissioner of common schools, on or before the first day of September in each year, a statement of the number of examinations held by the board, the number of applicants examined, the total number of certificates granted, and the number for each term mentioned in section forty hundred and seventy-three, the amount of fees received and paid to the county treasurer, the amount received from the county treasury by the members of the board for their services, and such other statistics and information in relation to the

duties of the board as the commissioner may require; and he shall deposit with the county auditor a bond, with surety to be approved by the auditor, in the sum of three hundred dollars, that he will pay into the county treasury, quarterly, the examination fees received by the board, and make the statistical returns required by this chapter. (1888, April 11: 85 v. 192, 195; Rev. Stat. 1880; 70 v. 241, § 95; S. & S. 707.)

Blanks for reports are sent to the county auditors for distribution.

CITY AND VILLAGE EXAMINERS.

Sec. 4077. [Boards of city districts of first class.] There shall be a board of examiners for each city district of the first class, to be appointed by the board of education of the district; such board may consist of either three or six persons, as the board of education may determine, and two of the persons appointed shall have had at least two years' practical experience in teaching and shall otherwise be competent for the position and residents of the district for which they were appointed; the term of office of such examiners shall be three years; the term of one-third of the examiners shall expire on the 31st day of August each year; but the board of education may revoke any appointment upon satisfactory proof that the appointee is inefficient, negligent, or guilty of immoral conduct; when a vacancy occurs in the board, whether from expiration of term of office, refusal to serve, or other cause, the board of education shall fill the same by appointment for the full unexpired term, as the case demands; and within ten days after an appointment, the clerk of the board of education shall report to the commissioner of common schools the name of the appointee, and whether the appointment is for a full or an unexpired term. (88 v. 280; 85 v. 330, 332; Rev. Stat. 1880; 70 v. 195, § 97; 71 v. 107, § 96.)

See note to section 4065.

Who eligible for city and village examiners; see Sec. 4085.

See 4 C. D., 540 under Sec. 4069.

Sec. (4078) 4708. [Standard of qualification for teachers; examinations of schools; law governing board in examining teachers; special examiners; their oath; duty of school superintendents.] Such board of examiners shall determine the standard of qualification for teachers, and may examine any school in the district when such examination is deemed necessary to ascertain a teacher's qualifications, but in the examination of applicants and the granting of certificates the board shall be governed by the provisions of section forty hundred and seventy-four, and to secure a thorough examination of applicants in difficult branches, or special studies, the board may secure the assistance, temporarily, of persons of sufficient knowledge in such branches or studies, who shall promise on oath

or affirmation, to be administered by the clerk of the board of examiners, to perform the duties of examiner faithfully and impartially, and superintendents of schools shall give to the board all necessary information in reference to branches and special studies to be taught, and the branches of study and grades of school which teachers will be required to teach. (1888, April 16: 85 v. 330, 332; Rev. Stat. 1880; 71 v. 107, § 96.)

This act is enrolled as section 4708, and printed in 85 v. 330, 332; 1888, April 16, as section 4708; but the enacting and repealing sections of said act designate section 4078.

An expert secured by the board to conduct examinations in any particular branch should certify the result of the examination to the board; all certificates should be signed by members of the board and by such members only. Com.

Sec. 4079. [Organization of board; bond of clerk.] The board shall organize by choosing from its members a president and a clerk; and the clerk shall give bond, in the sum of five hundred dollars, with surety to be approved by the board of education, conditioned that he will perform faithfully the duties required of him by this chapter, which bond shall be deposited with the clerk of the board of education. (70 v. 195, § 98)

Sec. 4080. [Meetings for examinations; notice.] The board shall hold not less than two meetings each year, notice of which shall be published in some newspaper of general circulation in the district, and the expense of such publication shall be paid as provided in section forty hundred and eighty-two, and all examinations of applicants shall be conducted at the meetings of the boards thus called, and the examination of each and every applicant shall be in the presence of at least two members of the board. (1888, April 16: 85 v. 330, 332.)

Sec 4081. [Examination fee; granting and revocation of certificates; investigation of teachers.] Each person who applies to the board for examination shall pay to the clerk a fee of fifty cents. The board may grant certificates for one, two and three years, from the day of examination, which shall be signed by the president and attested by the clerk, and shall be valid within the district wherein they were issued; and the examiners may grant certificates for five years to such applicants as in addition to the necessary qualifications, have been for three years next preceding their application engaged in teaching, eighteen months of which experience shall have been in one place; and such certificate for five years shall be renewable upon the same conditions, but without examination, at the discretion of the examining board; and on the production of satisfactory evidence that a person to whom a certificate has been issued is inefficient, or guilty of immoral or improper conduct, the board may revoke the certificate and discharge such person from employment as teacher in the district; but such teacher shall be entitled to pay for services to the time of such discharge, and the word teacher shall be held

to include superintendent of schools; and when any holder of a certificate is charged with intemperance or other immorality, the board shall have power to send for witnesses and examine them on oath touching the matter under investigation. (1888, April 16: 85 v. 330, 333; 78 v. 87; 77 v. 6; Rev. Stat. 1880; 70 v. 195, § 100; 72 v. 114, § 99.)

See notes under sections 4073 and 4074.

(4081-1.) [Granting of life certificates in Cincinnati.] Boards of examiners in city districts of the first grade of the first class, in addition to the grades of certificates named in section 4081, may grant permanent certificates of each class issued by them, which shall be valid for life within the district wherein granted; these certificates to be conditioned upon the applicant therefor having had fifty months successful experience in teaching, at least thirty of which shall have been in the schools of said city district, and in addition to the subjects mentioned in section 4074, said applicant shall give evidence of satisfactory knowledge of the history of education, science of education and psychology. Applicants for permanent certificates under this act shall pay to the clerk of said board of examiners a fee of three (\$3) dollars. (94 v. 91.)

Sec. 4082. [Compensation of examiners; incidental expenses.] The board of education shall fix the compensation of such examiners, and the person called to their assistance, furnish the necessary books, blanks, and stationery for their use, and designate a school building within the district in which they shall conduct examinations, and cause such building to be lighted and heated if necessary; and such compensation, and the incidental expenses incurred on account of the board of examiners, shall be paid, by order of the board of education, from the contingent fund of the district. (71 v. 107, § 96.)

See Sec. 4080.

Where it appears that a board of education of a city, in response to a writ of mandamus requiring it to fix the compensation provided for in this section, has failed substantially to comply with such order, and either wilfully and in bad faith, or, as in this case, from mistaken and misapprehension of the real facts, has fixed a mere nominal and wholly insufficient amount, the court issuing such writ may properly call upon such board to review its action, in the light of the facts as found; and while it will not control or interfere with judicial discretion, if exercised in good faith, it will see and require that a fair and legitimate attempt be made to comply with the order of the court. 4 C. C., 93.

See statement of facts in 4 C. C., 97.

Sec. 4083. [City and village examiners; duties of clerk; disposition of fees.] The clerk shall keep a record of the proceedings of the board, and such statistics as the commissioner of common schools may require, and shall report such statistics to the commissioner annually, on or before the first day of September; he shall pay the examination fees received by him to the treasurer of the district within ten days after each meeting, and at the

same time file with the clerk of the board of education a written statement of the amount, and also a statement of the number of applicants, male and female, examined, and the number of certificates granted, and for what terms; and the fees paid to the treasurer of the district shall be applied to the support of teachers' institutes, as provided in chapter thirteen. (1888, April 11: 85 v. 192, 196; Rev. Stat. 1880; 70 v. 195, § 98.)

Blanks for reports are sent to the county auditors for distribution.

Sec. 4084. [Boards of school examiners for city districts, second class, and village districts.] The provisions of this chapter relating to boards of examiners for city districts of the first class, shall be applicable to such boards for city districts of the second class and village districts having an enumeration of not less than seven hundred youth of school age; except that such boards shall consist of three members, and except also that the examination fees shall be disposed of, and statements filed with the county auditor, as provided in section four thousand and seventy-two, in all such districts not covered by the provisions of section four thousand and ninety-three. (1888, Feb. 22: 85 v. 30; 83 v. 35; 78 v. 87; Rev. Stat. 1880; 70 v. 195, § 101; 72 v. 114, § 99.)

Sec. 4085. [Who ineligible as examiner.] No board of county city, or village examiners shall have more than one member connected with the same school.

In any system of schools entitled to a city board of examiners, the superintendent, who is not connected with any one school specially, but with the system as a whole, can be a member of the board (and ought always to be so), and as many of the teachers as the board of education may choose to select, provided no two of them are from the same building. Com.

CHAPTER 13.

TEACHERS' INSTITUTES.

SECTION.

4086. County teachers' institutes; organization; election of officers; bond; time, and notice of election.
 4087. Payment of institute fund to committee.
 4088. Teachers' institutes; report of committee.
 4089. Forfeiture of committee's bond.
 4090. When school commissioner may hold institute.

SECTION.

4091. Teachers may dismiss school to attend institute.
 4092. Institute for city districts of first class.
 4093. Institutes for teachers of adjacent counties.
 4094. Length of sessions; reports of certain institutes.

For sections 4086-4094, see S. & C., 1379.

Sec. 4086. [Organization of county teachers' institute; elections, term, duties and bond of officers.] A teachers' institute may be organized in any county, by the association of not less than thirty practical teachers of common schools residing therein, who shall declare their intention in writing, to attend such institute the purpose of which shall be the improvement of such teachers in their profession; such institute shall elect annually by ballot a president, secretary, both of whom shall be ex-officio members of the executive board, and one member of an executive committee who shall serve for a term of three years; provided at the first annual election under the provisions of this act, there shall be elected three members of an executive committee; the one receiving the highest number of votes to serve three years; the one receiving the next highest number of votes to serve two years; and the one receiving the next highest number of votes to serve one year. It shall be the duty of this executive committee to manage the affairs of the institute; which committee shall enter into a bond, payable to the state of Ohio, with sufficient surety, to be approved by the county auditor in double the amount of the institute fund in the county treasury, for the benefit of the institute fund of the county, and conditioned that the committee shall account faithfully for the money which will come into its possession, and make the report to the commissioner of common schools, required by section four thousand and eight, and such election of officers shall be held during the session of such institute and at a time fixed by the executive committee thereof, of which election at least three days' notice shall be given the members of such institute by posting conspicuously in a room, where such institute is held, a notice of the time and place of holding such election, and of the officers to be voted for at such election. (92 v. 10; 84 v. 230; Rev. Stat. 1880; 70 v. 195, § 112.)

Sec. 20-1. The commissioners of the several counties of the state may receive bequests, donations and gifts of real and personal property and money to promote and advance the cause of education in their respective counties; a part may be used to defray the expenses of the teachers' institute, each year.

The purpose of a teachers' institute being the improvement of the teachers entitled to its privileges in their profession, it clearly follows that the instruction given therein should be mainly upon methods of teaching and the management of schools. Com.

To give full force and effect to all the provisions of this section the terms "executive board" and "executive committee" must be considered as synonymous, otherwise an executive board has been created without any duties or power whatever; the president and secretary of the institute, while ex-officio members of the *executive committee*, are not necessarily chairman and secretary of the committee. Com.

Sec. 4087. [Payment of institute fund to committee.] The declaration and bond mentioned in section *forty hundred and eighty-six* shall be filed with the county auditor, whereupon the auditor shall give to the institute committee an order on the county treasurer for the amount of the institute fund in the treasury; and any portion of said fund not disbursed by the committee shall be returned to the county treasury, on the certificate of the county auditor. (70 v. 195, § 112; S. & S. 709.)

Sec. 4088. [Teachers' institutes; report of committee.] The institute committee shall, within five days after the adjournment of the institute, report to the commissioner of common schools the number of teachers in attendance at the institute, the names of instructors and lecturers, the amount of money received and disbursed by the committee, and such other information relating to the institute as the commissioner may require; and on failure to make such report the committee shall forfeit and pay to the state the sum of fifty dollars. (1888, April 11; 85 v. 192, 196; Rev. Stat. 1880; 70 v. 195, § 112; S. & S. 709.)

Blanks for reports are sent to the county auditor for distribution.

Sec. 4089. [Forfeiture of committee's bond.] Upon the forfeiture of the committee's bond, the prosecuting attorney of the county shall prosecute an action thereon, in the name of the state, and collect any money which the committee may have failed to disburse according to law, and any penalty to which the committee may be liable under this chapter, and pay the same into the county treasury to the credit of the institute fund. (70 v. 195, § 112.)

Sec. 4090. [When school commissioner may hold institute.] When a teachers' institute has not been held within two years in any county, the commissioner of common schools may hold or cause to be held therein such institute; and the management thereof and all proceedings in relation thereto, shall be the same as hereinbefore provided, except that the written declaration, required shall not be necessary. (70 v. 195, § 114.)

Sec. 4091. [Teachers may dismiss school to attend institute.] All teachers of common schools within any county in which a county institute is held, except those employed in city districts of the first class, may dismiss their schools for the purpose of attending such institute, for the

week in which it is held; and boards of education of the city districts of the first class situate within such counties may, by resolution, extend the privilege specified above to the teachers employed by them; but no union or graded school shall be dismissed for such purpose unless a majority of the teachers employed therein assent thereto. (70 v., 195, § 117.)

The law under this section does not provide that teachers shall receive pay for their attendance at the institute; but the board may by resolution allow them their regular salaries during such attendance. No teacher, however, can be paid for more days than he was actually present. Com.

Sec. 4092. [Institutes for city districts of the first class.] The board of education of each city district of the first class may provide for holding an institute yearly, for the improvement of the teachers of the common schools therein; and general meetings of the teachers of any such city district held upon not less than four days in any year, whether consecutive days or not, for the purposes of instruction, shall be deemed to constitute a teachers' institute for said city district within the meaning of this section; the expenses of such institute shall be paid from the institute fund provided for by section 4083; if the board of any district do not provide for such institute in any year, it shall cause the institute fund in the hands of the district treasurer to be paid to the treasurer of the county wherein the district is situate, who shall place the same to the credit of the county institute fund, and the teachers of the schools of such districts shall be entitled, in such case, to the advantages of the county institute, subject to the provisions of the preceding section; and the clerk of the board shall make the report of the institute required by section 4094. (90 v. 131; 70 v. 195, § 118.)

Sec. 4093. [Institute for teachers of adjacent counties.] An association of teachers of several adjacent counties may organize an institute for the specific purpose of providing for the professional instruction of the teachers of the graded schools in such counties, and the boards of all city, village, and special districts within such counties may contribute from the institute and contingent funds under their control, to defray the expenses thereof, and may permit teachers employed by them to attend the institute one week; and such institute shall appoint a secretary, who shall make the report required by the next section. (70 v. 195, § 119.)

Sec. 4094. [Length of session; report of certain institutes.] All institutes held under the provisions of this chapter, except the institute provided for by section forty hundred and ninety-three, shall continue at least four days; and a report of each institute held in pursuance of the provisions of sections forty hundred and ninety-two and forty hundred and ninety-three, shall be made to the commissioner of common schools

Ch. 13.

Teachers' Institutes.

within five days after the adjournment thereof, which shall state the number of teachers in attendance, the names of the instructors and lecturers, the total expenses of the institute, and the portion thereof paid from institute funds, and such other information relating to the institute as the commissioner may require. (1888, April 11; 85 v. 192, 196; Rev. Stat. 1880; 70 v. 195, §§ 113, 115, 118.)

CHAPTER 14.

COLLEGES AND UNIVERSITIES.

SECTION.

- 4095. Common council of Cincinnati may accept educational trusts.
- 4096. How trust funds to be applied.
- 4097. Trusteeship to vest in city, etc.
- 4098. Board of directors; how appointed.
- 4098-1. Appointment of trustees of universities in Cincinnati supported by taxation in whole or in part.
- 4099. Powers of board.
- 4100. Citizens not to be charged for admission of children.
- 4101. Accounts and expenditures of endowment fund; how said fund may be invested.
- 4102. When board may confer degrees.
- 4103. Site and grounds for Cincinnati and Toledo universities.
- 4104. When and how tax may be levied.
- 4105. Provisions of chapter applicable to city of Toledo.
- 4105a. Ohio University authorized to issue certificates of indebtedness.
- 4105b. Rate of interest; when maturing; purpose, etc.
- 4105-1. Providing for the sale of certain Ohio University lands.
- 4105-2. Owner to receive deed; form of.
- 4105-3. Validity of such deed.
- 4105-4. Registry of deed, etc., to be kept.
- 4105-5. Proceeds to be deposited in state treasury and become irreducible trust fund.
- 4105-6. Levy and collection of state tax upon lands donated to Athens, Ohio, university for use of said university.
- 4105-7. Tax in lieu of rents; tax collected from railroad companies not to include tax on rolling stock.
- 4105-8. (Repeal.)
- 4105-9. Establishment and name of Ohio State University.
- 4105-10. Style and powers of trustees.
- 4105-11. Further powers and duties.
- 4105-12. Who shall be admitted as pupils.
- 4105-13. Prerogative of the trustees.
- 4105-14. Officers of the board.
- 4105-15. Board may receive devises of land, etc.
- 4105-16. Title of lands to be vested in the state, etc.
- 4105-17. Attorney general to be legal adviser of the board.
- 4105-18. Location of the college; sundry provisions.
- 4105-19. Acceptance of ceded lands.
- 4105-20. Compensation for damages to lands may be demanded.

SECTION.

- 4105-21. Title of lands invested in trustees of agricultural college, etc.
- 4105-22. Division of unsold lands into tracts, etc.; tracts to be numbered and appraised.
- 4105-23. To be sold at private or public sale; contracts of sale to be recorded, etc.
- 4105-24. Trustees of Ohio State University may erect residence for faculty.
- 4105-25. Acts repealed.
- 4105-26. Ohio State University; establishment of a school of mines; course of study; school apparatus, etc.
- 4105-27. Employment and duties of instructors; cabinet of specimens to be kept.
- 4105-28. Appropriations.
- 4105-29. Support of Ohio State University Law School.
- 4105-30. Ohio State University department of ceramics.
- 4105-31. Special instruction.
- 4105-32. Laboratory.
- 4105-33. Expert.
- 4105-34. Appropriations.
- 4105-35. Written analysis to be furnished by professor of chemistry at agricultural college.
- 4105-36. To be known as "The Ohio State University."
- 4105-37. To be governed by board of seven trustees; how and by whom appointed.
- 4105-38. Their terms of office; to be paid their expenses while engaged in discharge of duties.
- 4105-39. Powers and duties of board.
- 4105-40. Collections of specimens.
- 4105-41. Meetings of board of trustees.
- 4105-42. Report of trustees; when made and what to contain; printing and distribution of report.
- 4105-43. Funds from sale of land-scrip to form part of irreducible debt, interest of same to be paid university.
- 4105-44. Board of trustees to fix compensation of faculty, teachers, etc.
- 4105-45. Branches prescribed at Ohio State University.
- 4105 46. Computation and investment of interest.
- 4105-47. How interest invested.
- 4105-48. Trustees of Ohio State University authorized to make certain deeds.
- 4105-49. Duty of auditor of state.

Ch. 14.

Colleges and Universities.

SECTION.

- 4105-50. Relief of persons who wrongfully paid for land in Virginia Military District; duty of auditor of state.
- 4105-51. Appropriations.
- 4105-52. Costs of obtaining evidence.
- 4105-53. Report to general assembly.
- 4105-54. Normal and industrial department of Wilberforce University.
- 4105-55. Board of trustees; appointment by governor, etc.
- 4105-56. Choosing of trustees by university board.
- 4105-57. Vacancies.
- 4105-58. Names of trustees chosen by university board to be certified to governor.

SECTION.

- 4105-59. Meetings of trustees; their expenses.
- 4105-60. Powers and duties of trustees.
- 4105-61. Non-sectarian character of department.
- 4105-62. Payment to university of state appropriations; bond of treasurer.
- 4105-63. Annual report, and estimate of appropriations.
- 4105-64. Power of member of general assembly to designate youth for free admission to such department.
- 4105-65. Appropriations; application of revenues.
- 4105-66. Annual appropriations for Wilberforce University.

CINCINNATI AND TOLEDO UNIVERSITIES.

Sec. 4095. [Common council of Cincinnati may accept educational trusts.] The board of directors of the university of the city of Cincinnati in the name and behalf of the city, may accept and take any property or funds heretofore or hereafter given to the city for the purposes of founding, maintaining, or aiding a university, college or other institution for the promotion of free education, and upon such terms, conditions, and trusts, not inconsistent with law, as the said board of directors may deem expedient and proper for that end. (92 v. 358; 67 v. 86, § 1.)

Sec. 4096. [How trust funds to be applied.] For the further endowment, maintenance, and aid of any university, college, or institution for the promotion of free education, heretofore or hereafter so founded in said city, the board of directors of the university thereof may, in the name and in behalf of the city, accept and take as trustee, and in trust for the purpose aforesaid, any estate, property, or funds, which have been or may be lawfully transferred to the city for such use, by any person or body corporate having the same, or any annuity or endowment in the nature of income which may be covenanted or pledged to the city toward such use by any person or body corporate; and any person or body corporate having and holding any estate, property, or funds, in trust or applicable for the promotion of education, or the advancement of any of the arts or sciences, may convey, assign, transfer, and deliver over the same to said city as trustee in his or its place, or covenant or pledge its income, or any part thereof, to the same; and such estate, property, funds, or income shall be held and applied by such city in trust for the further endowment or maintenance of such university, college, or institution, in accordance, nevertheless, with the terms and true intent of any trust or condition upon which the same was originally given or held. (92 v. 358; 67 v. 86, § 2.)

Sec. 4097. [Trusteeship to vest in city, etc.] Upon such transfer, and the acceptance thereof, the city and its successors, as trustees, shall

become and be perpetually obligated and held to observe and execute such trust, in all respects, according to any further terms and conditions lawfully agreed upon at such transfer and acceptance; and any court having jurisdiction of the appointment of trustees of such trusts for educational purposes may, in proceedings for that purpose duly instituted and had, appoint and constitute said city, with the consent of the common council thereof, trustee of the estate, property, and funds so transferred to it, and may dispense with the bond or surety on the part (of) the city for the performance of such trust, unless the same is required by the original terms or conditions thereof, and shall upon the due transfer and acceptance of such trust by the city, release and fully discharge the trustee or trustees so transferring the same. (67 v. 86, § 2.)

Sec. 4098. [Board of directors; how appointed.] The custody and management of any and all estates, property, or funds so given, or transferred in trust to said city, and the entire administration of any and all such trusts so accepted by the common council thereof, and any university, college, or institution for the promotion of education heretofore or hereafter so founded in or by said city, except the common and high schools thereof, shall be committed to a board of nineteen directors, of whom the mayor of the city shall be one, and the others shall be appointed by the common council from persons of approved learning, discretion, and fitness for the office, six of whom shall be appointed from persons nominated to the common council by the board of education of the city, and twelve from persons nominated to the common council by the superior court of said city, if there be such court; the term of office of each director shall be six years. Such directors shall serve until the election or qualification of their successors; and any vacancy in the board caused by expiration of term, resignation, removal, or any other cause, shall be filled by appointment herein provided for the unexpired term. The board of directors shall, at the first regular meeting in January, elect a chairman, who is hereby authorized to administer the oath of office to any director so appointed. (1889, April 13; 86 v. 292; 78 v. 178; Rev. Stat. 1880; 67 v. 86, § 3.)

Cited as illustrating the appointing power in courts, 52 O. S., 419, 432.

Section 2 of the act of 1899, April 13 (86 v. 292), reads as follows:

"Sec. 2. (This act not to affect present directors.) Sec. 4098 of the Revised Statutes is hereby repealed; and this act shall take effect and be in force from and after its passage, but shall not be construed to effect the term of any director appointed under the section of the Revised Statutes hereby repealed."

(4098-1.) [Appointment of trustees of universities in Cincinnati supported by taxation in whole or in part.] In cities of the first grade of the first class all vacancies in the board of directors or trustees of universities supported in whole or in part by public taxation upon the property of such city, shall be filled by appointment

by the judge or judges of the superior court of such cities where the same have a court; otherwise by the judge or judges of the common pleas court of the county in which such cities are located. (89 v. 31.)

Sec. 4099. [Powers of board.] As to all matters not herein or otherwise provided by law, the directors shall have all the authority, powers, and control vested in or belonging to said city, as to the management and control of the state, property and funds given, transferred, covenanted, or pledged to the city for the trusts and purposes aforesaid, and the government, conduct, and control of the university, college, or institution so founded; they may appoint a clerk, and all agents proper and necessary for the care and administration of the trust property, and the collection of the income, rents, and profits thereof, may appoint the president, professors, tutors, instructors, agents, and servants necessary and proper for such university, college, or institution, and determine their compensation, may provide all the necessary buildings, books, apparatus, and means and appliances, and pass all such by-laws, rules, and regulations concerning the president, professors, tutors, instructors, agents, and servants, and the admission, government, and tuition of students, as they deem wise and proper; but they may, by suitable by-laws, delegate and commit the admission, government, management, and control of the students, course of studies, discipline, and other internal affairs of such university, college, or institution, to the faculty which the directors may appoint from among the professors. (67 v. 86, § 3.)

Sec. 4100. [Citizens not to be charged for admission of children.] The citizens of said city whose children, wards, or apprentices are admitted to such institution, shall not be charged for such admission into the academic department; and no charge shall be made for the instruction of such pupils in the academic department. The board of directors of such university may charge fees to students in other departments, and shall have power in its discretion from time to time to make the university free in any or all of its departments to citizens of Hamilton county, Ohio. (92 v. 359; 67 v. 86, § 3.)

Sec. 4101. [Accounts of receipts and expenditures of endowment fund; how said fund may be invested.] The accounts of such trusts, estate, property and funds, and of the income and expenditure thereof, shall be kept by the city auditor entirely distinct from all other accounts or affairs of the city, and the moneys shall be kept by the city treasurer distinct from other moneys; and the directors shall at all times confine the expenditures within the income of the trust, estate, property and funds, and shall annually report to the common council a full statement of the accounts and administration of such trust; and said directors are hereby authorized

to invest any part of the funds belonging to such university or any department thereof, as they may from time to time deem proper, in the bonds of the United States or of the state of Ohio, or of the city of Cincinnati, and in first mortgages on real estate within the limits of said city, to an amount not to exceed one-half the value of such real estate, as determined by an appraisement to be made by a committee of said board, appointed for that purpose; and said directors shall not invest said funds in any manner other than as hereinbefore provided. (1883, March 29: 80 v. 86; Rev. Stat. 1880; 67 v. 86, § 3.)

Sec. 4102. [When board may confer degrees.] The directors of such university, college, or institution may, upon the recommendation of the faculty thereof, confer such degrees and honors as are customary in universities or colleges in the United States, and such others as, with reference to the course of studies and attainments of the graduates in special departments, they may deem proper. (67 v. 86, § 4.)

4103. [Site and grounds for Cincinnati and Toledo universities.] The common council of said city may set apart or appropriate as a site for the buildings and grounds of the university, college or institution so founded, any public grounds of the city, not especially appropriated or dedicated by ordinance to any other use or purpose, any law to the contrary notwithstanding; and the board of education of said city may also, for a like purpose, set apart, convey or lease for a term of years any grounds owned by such board. And any grant of the use of such grounds heretofore or hereafter made by any city council or board of education may be modified, changed or extended as to the time when the same shall take effect and be in force, or otherwise, by agreement between such council or board and the directors of such university, and said council or board or any board of legislation shall be taken and held to be the representatives of such city, vested with the title, right of possession and entire control of such property for the purposes of a new grant. (89 v. 251; 82 v. 121; Rev. Stat. 1880; 67 v. 86, § 5.)

Sec. 4104. [When and how tax may be levied for universities in Cincinnati; astronomical observatory.] In cities of the first grade of the first class where there are universities supported in whole or in part by public taxation upon the property of such city, the board of education of the city shall, upon the application of said board of directors of such universities, assess and levy a tax on the taxable property of the city, not less than nor more than three-tenths of one mill on the dollar valuation thereof, to be applied by the board of directors to the support of such university, college, or institution, and the board of education shall also assess and levy, annually, not less than three hundredths nor more than five hundredths of one mill on the dollar of such valuation, for the establishment and maintenance of an astronomical observatory in con-

nection with such university, college or institution, the proceeds of which shall be paid to the board of directors, and applied by them for said purpose exclusively. (94 v. 399; 90 v. 150; 67 v. 86, § 5; 75 v. 133, § 1.)

Sec. 4105. [Provisions of this chapter applicable to Toledo; exceptions; board of trustees.] That the provisions of this chapter shall be applicable to cities of the third grade of the first class, except that the rate of taxation to be assessed and levied, shall not exceed one-half of one mill upon the taxable property of such cities; and except that the board of directors or trustees shall consist of five members and shall be filled by appointment from persons of approved learning, discretion and fitness for the office, by the board of education and confirmed by the common council in the city in which such university shall be located; such appointments shall be made within thirty days after the passage of this act, and one member shall be appointed for one year, one member for two years, one member for three years, one member for four years, and one member for five years, and in April, 1901, and annually thereafter one member shall be appointed for a term of five years. The members of the university board of directors or trustees in cities of the third grade of the first class, in office when this act takes effect, shall continue in office until the board herein provided for, shall be appointed and organized, at which time the powers and duties of such former board shall cease and determine, and their offices thenceforth shall be and are hereby abolished; and the directors or trustees appointed under this section shall serve until their successors are appointed and qualified, and any vacancy which may occur in the board of directors or trustees from resignation, removal, death or other cause shall be filled by appointment in the same manner as is provided for the appointment of directors or trustees in this section, for the unexpired term of such director or trustee. (94 v. 241; 70 v. 117, § 1.)

OHIO UNIVERSITY.

Members of legislature not eligible to be trustees; see Sec. 18-1, R. S.

(4105a) **Sec. 1.** [Ohio University authorized to issue certificates of indebtedness.] The board of trustees of the Ohio university is hereby authorized to issue from time to time certificates of indebtedness to an amount not exceeding in the aggregate fifty-five thousand dollars (\$55,000.00) in anticipation of the annual levies authorized by section 3951 of the Revised Statutes of Ohio, as amended March 28, 1891 (88 O. L., page 159), and as further amended February 26, 1896 (92 O. L., page 40), provided that the whole amount of said certificates of indebtedness shall be paid by said board of trustees out of the proceeds of such levies on or before December 31, 1916, and provided, further, that not less than five thousand dollars (\$5,000.00) in the year

1906, and five thousand dollars (\$5,000.00) in each of the years 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915 and 1916 shall be set apart of such annual levy for the redemption of the certificates herein authorized. (94 v. 94.)

(4105*b*) **Sec. 2.** [Rate of interest; when maturing; purpose, etc.] The certificates herein authorized shall be signed by the president and secretary of said board of trustees of the Ohio university and sealed with the seal of the university, shall bear such rate of interest, not exceeding five (5) per cent. per annum, payable semi-annually, as said board of trustees shall determine, and shall be payable by said board of trustees out of the revenues to arise under the act entitled, "An act to supplement section 3951 of the Revised Statutes of Ohio, as amended March 20, 1891 (O. L. 88, page 159), passed February 26, 1896 (O. L. 92, page 40), and the moneys arising from the issue of said certificates shall be applied exclusively to the redemption of the certificates of indebtedness heretofore issued by said board of trustees, and maturing ten thousand dollars (\$10,000.00) on the first day of September, 1900, and ten thousand dollars (\$10,000.00) on the first day of September in each of the years 1901, 1902 and 1903; and five thousand dollars (\$5,000.00) on the first day of September, 1904, and ten thousand dollars (\$10,000.00) on the first day of September, 1905. Said certificates of indebtedness shall be sold by said board of trustees from time to time in such amounts as may be necessary to meet the payment of the outstanding certificates of indebtedness mentioned in section 2 of this act, at not less than their par value, to the highest bidder, after thirty days' notice of the sale has been given in not less than one newspaper published and of general circulation in each of the cities of Cincinnati, Cleveland and Columbus. (94 v. 94.)

(4105-1) **Sec. 1.** [Providing for sale of university lands.] The owner of the lands or town lots held under leases from the president and trustees of the Ohio University, or held under sale-leases or assignments by or under the original lessees, may pay to the treasurer for the time being of said university, such sum of money, as being put at interest at six per cent. will yield the amount of rent reserved in the original lease, or in case of a division of the original tract or parcel leased, will equal the proper aliquot part thereof, or the part agreed upon by the several owners; providing, that such person so surrendering and releasing to said corporation shall pay the necessary expenses incident to such change of tenure, and procure the services of an agent to perform the necessary labor thereof; and upon payment of such sum and of all rents due upon the land, the treasurer aforesaid shall, on demand of such owner, give him a certificate of such payment. (80 v. 193.)

(4105-2) **Sec. 2. [Owner to receive deed; form of.]** That such owner, upon such payment, shall be entitled to receive a deed of conveyance for such land by him owned, to be signed by the president of said corporation, countersigned by its secretary, and sealed with the corporate seal of the university, conveying the premises in fee simple to such owner, or such owner may, at his option, demand and receive a certificate as aforesaid; and the governor of Ohio, upon presentation thereof, shall execute and deliver to such owner, a deed in due form of law conveying the premises in fee simple to such owner. (80 v. 193.)

(4105-3) **Sec. 3. [Validity of such deed.]** That either of such deeds, so made, shall have the effect in-law and in fact to vest in the grantee an absolute estate in fee simple in the premises, subject, however, to all liens, equities, or rights of third persons in, to or upon the premises. (80 v. 193.)

(4105-4) **Sec. 4. [Registry of deed, etc., to be kept.]** It shall be the duty of such secretary to keep an accurate registry of all such payment, certificates and deeds, with an accurate description of the tract or lot of land so paid for or deeded; and thereafter, the lands so deeded shall be subject to taxation, in like manner as other freehold estates in said county; and the original leases therefor, in so far as regards the land so deeded, shall cease to have force or effect. (80 v. 193.)

(4105-5) **Sec. 5. [Proceeds to be deposited in state treasury, and become irreducible trust fund.]** That it shall be the duty of the treasurer of the Ohio University, on or before the first day of January, next, after said receipt of money, to deposit the same in the state treasury upon the certificate of the state auditor, and the sum so deposited shall be added to the irreducible trust funds held by the state for education purposes, and interest thereon shall be paid semi-annually to the treasurer of said university, upon the requisition of the state auditor. (80 v. 193.)

(4105-6) **Sec. 1. [Levy and collection of state tax upon lands donated to Athens University for use of said university.]** Hereafter a state tax or a tax equal to the state tax upon like property, shall be levied and collected upon all lands donated to the Ohio University, situated at Athens, Ohio, and held by lease from said university or by deed from the governor or the said university, including such parts of said lands as are or may be owned, occupied or used by railroad companies as roadbeds, roadways, station houses, or for other purposes; and the said taxes when collected shall be paid over by the treasurer of Athens county, upon the warrant of the auditor of said county, to the treasurer of the Ohio University, for its use. (82 v. 115.)

(4105-7) **Sec. 2. [Tax in lieu of rents; tax collected from railroad companies not to include tax upon rolling stock.]** That the tax

so to be collected upon lands so held by lease, shall be in lieu of so much of the rents due to the university; and the tax so to be collected from railroad companies, and paid to the university, shall not include the tax upon rolling stock. (82 v. 115.)

(4105-8) **Sec. 3. [Repeal.]** That the act entitled "an act to refund to the Ohio University certain funds in the state treasury, and to provide for the future payment of the claims of said university," passed March 25, 1875, be and is hereby repealed, saving however, all rights vested or required under said act. (82 v. 115.)

OHIO STATE UNIVERSITY.

Right of way through Ohio University lands granted to the Lake Erie and Southern R'y. 88 v. 317.

Right of way through same along Olentangy river granted to Columbus for a street. 89 v. 301.

Acceptance of congressional appropriation of part of proceeds of sales of public lands to certain colleges and designating the treasurer of the Ohio State University to receive such moneys. 88 v. 519.

Professor of physics to have charge of standards of weights and measures; Sec. 142, R. S.
Member of legislature not eligible to be trustee; Sec. 18-1, R. S.

State forestry bureau established at the State University; Sec. 400-15, R. S.

(4105-9) **Sec. 1. [Establishment and style of college.]** A college, to be styled the Ohio Agricultural and Mechanical College, is hereby established in this state, in accordance with the provisions of an act of congress of the United States, passed July 2d, 1862, entitled "an act donating public lands to the several states and territories which may provide colleges for the benefit of agricultural and mechanic arts," and said college to be located and controlled as hereinafter provided. The leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agricultural and mechanic arts. (67 v. 20.)

Name changed to Ohio State University; see Sec. 4105-37.

(4105-10) **Sec. 4. [Style and powers of trustees.]** The trustees and their successors in office shall be styled the "Board of trustees of the Ohio Agricultural and Mechanical College," with the right as such, of suing and being sued, of contracting and being contracted with, of making and using a common seal, and altering the same at pleasure. (67 v. 20.)

Trustees—number and terms of, powers and duties; see Sec. 4105-38.

(4105-11) **Sec. 5. [Further powers and duties.]** The board of trustees shall have power to adopt by-laws, rules and regulations for the government of said college; to elect a president; to determine the number of professors and tutors, elect the same, and fix their salaries. They shall also have power to remove the president or any professor or tutor

whenever the interests of the college, in their judgment, shall require; to fix and regulate the course of instruction, and to prescribe the extent and character of experiments to be made. (67 v. 20.)

(4105-12) Sec. 7. [Who shall be admitted as pupils.] The college shall be open to all persons over fourteen years of age, subject to such rules and regulations and limitations, as to numbers from the several counties of the state, as may be prescribed by the board of trustees; provided, that each county shall be entitled to its just proportion, according to its population. The board may provide for courses of lectures, either at the seat of the college or elsewhere in the state, which shall be free to all. (67 v. 20.)

(4105-13) Sec. 8. [Prerogative of the trustees.] The board of trustees shall have the general supervision of all lands, buildings, and other property belonging to said college, and the control of all expenses therefor; provided, always, that said board shall not contract any debt not previously authorized by the general assembly of the state of Ohio. (67 v. 20.)

(4105-14) Sec. 9. [Officers of the board.] The board of trustees shall annually elect one of their number chairman, and in the absence of the chairman shall elect one of their number temporary chairman, and shall have power to appoint a secretary, treasurer, and librarian, and such other officers as the interests of the college may require, who may or may not be members of the board; and shall hold their offices for such term as said board shall fix, subject to removal by said board, and shall receive such compensation as the board shall prescribe. The treasurer shall, before entering upon the duties of his office give bond to the state of Ohio in such sum as the board may determine, which bond shall not be for a less sum than the probable amount that will be under his control in any one year, conditioned for the faithful discharge of his duties and the payment of all moneys coming into his hands, said bond to be approved by the attorney general of the state. (67 v. 20.)

(4105-15) Sec. 11. [Board may receive devises of land, etc.] The board of trustees shall have power to receive, and hold in trust, for the use and benefit of the college, any grant or devise of land, and any donation or bequest of money or other personal property, to be applied to the general or special use of the college; all donations or bequests of money shall be paid to the state treasurer, and invested in the same manner as the endowment fund of the college, unless otherwise directed in the donation or bequest. (67 v. 20.)

(4105-16) Sec. 13. [Title of lands to be vested in the state, etc.] The title for all lands for the use of said college, shall be made in fee simple to the state of Ohio, with covenants of seizin and warranty, and no title shall be taken to the state for the purposes aforesaid until the

attorney general shall be satisfied that the same is free from all defects and incumbrances. (67 v. 20.)

(4105-17) **Sec. 15.** [Attorney general to be legal adviser of the board.] The attorney general of the state shall be the legal adviser of said board of trustees, and he shall institute and prosecute all suits in behalf of the same, and shall receive the same compensation therefor as he is entitled to by law for suits brought in behalf of the asylums of the state. (67 v. 20.)

(4105-18) **Sec. 17.** [Location of the college; sundry provisos.] It shall be the duty of the board of trustees to permanently locate said agricultural and mechanical college upon lands, not less than one hundred acres, which in their judgment is best suited to the wants and purposes of said institution, the same being reasonably central in the state, and accessible by railroad from different parts thereof, having regard to healthiness of location, and also regarding the best interests of the college in the receipt of moneys, lands, or other property's donated to said college by any county, town, or individual, in consideration of the location of said college at a given place; provided, it shall require a three-fifths vote of the trustees to make said location; and, provided further, that said location shall be made on or before the fifteenth day of October, 1870; provided, further, that any person acting as a trustee, who shall accept or receive, directly or indirectly, any sum or amounts from any person or persons, to use their influence in favor of the location of said college at any particular point or place, shall be held to be guilty of a misdemeanor, and on conviction thereof by any court of competent jurisdiction, shall be fined in any sum not less than one thousand nor more than ten thousand dollars; provided, further, that in the location of said college the said trustees shall not in any event incur any debt or obligation exceeding forty thousand dollars; and if, in their opinion, the interests of the college cannot be best promoted without a larger expenditure for the location than that sum, then they may delay the permanent location of the same until the third Monday of January, 1871, and report their proceedings and conclusions to the general assembly; provided, further, that said college shall not be located until there are secured thereto for such location, donations in money, or unincumbered lands, at their cash valuation, whereon the college is to be located, or in both money and such lands, a sum equal to at least one hundred thousand dollars. (67 v. 120.)

This act is not in conflict with Sec. 1, Art. XIII, of the Constitution. 31 O. S., 15, 21.

(4105-19) **Sec. 1.** [Acceptance of ceded lands.] The unsurveyed and unsold lands ceded to the state of Ohio by a certain act of congress of the United States, approved February 18, 1871, situate and being in the Virginia Military district between the great Scioto and

the Little Miami rivers in said state, be and the same are hereby accepted by the state of Ohio, subject to the provisions of said act. (70 v. 107.)

Construction of this act and rights of occupants. 52 O. S., 567.

The cession covered all the title the United States had to and in these lands, and all it could convey. 2 C. C., 86.

(4105-20) Sec. 2. [Compensation for damages to lands may be demanded, etc.] The trustees of the Ohio agricultural and mechanical college are hereby authorized to demand from all persons who have destroyed or converted any timber growing upon the lands ceded to the state of Ohio, as stated in the act to which this is supplementary, since the date of said act of Congress ceding said lands to the state of Ohio, full compensation for the timber so destroyed or converted, and for all damages, and if payment shall be refused, to institute proper proceedings in the name of said Ohio Agricultural and Mechanical College, in any court of competent jurisdiction, to recover the same with damages and costs of suit; provided, that the provisions of this section shall not apply to timber taken from the one hundred and sixty acres by any person who shall obtain the title to the same under section three of this act. (70 v. 107.)

(4105-21) Sec. 3. [Title of lands invested in trustees of agricultural college, etc.] The title of said lands is hereby vested in the trustees of the Ohio Agricultural and Mechanical College for the benefit of said college; and said trustees are hereby required to cause a complete survey of said lands to be immediately made, and a correct plat thereof to be returned to said trustees, and to ascertain and set off, in reasonably compact form; by accurate boundaries to each occupant who was in actual possession of and living upon any of said lands at the time of the passage of said act of Congress, as provided therein, or their heirs and assigns, a tract not exceeding forty acres; and upon the payment, by the claimant, of the cost of surveying and making the deed, the said trustees shall make and deliver to said claimant a deed for said tract; and if any such occupant shall have been in such actual possession of more than forty acres, and is desirous of holding the same, he shall be entitled to have in addition to said forty acres, any number of acres not exceeding, with said forty acres, the number of one hundred and sixty acres, to be in reasonably compact form, by paying for the said excess over forty acres, the sum of one dollar per acre; and if any claimant under the provisions of this act shall desire to purchase any tract of land adjoining said forty acres, not exceeding, including said forty acres, the amount of one hundred and sixty acres, of which said claimant shall have been in actual possession, but does not desire to purchase the same at one dollar per acre, said trustees, upon notice by said claimant, shall cause said tract or

part of tract to be sold separate from other tracts of land at a valuation fixed upon by the appraisers named in this act, payable one-third at the date of the survey, and the residue in two equal annual installments, with interest at six per cent., payable annually, and upon full payment being made with the cost of survey and conveyance, said trustee shall make and deliver to such claimant, his or her heirs or assigns, a deed for said excess over said forty acres; provided, that any person claiming the benefit of the provisions of this section as occupant, shall comply in all respects with, and be subject to the provisions of the thirteenth section of the act of Congress, approved September 4, 1841, entitled an act to appropriate the proceeds of the sales of the public lands and to grant pre-emption rights, and to the rules and regulations of the general land office of the United States relating to proof for the establishment of pre-emptor's claims; provided, however, that the affidavit required by said thirteenth section of said act of Congress may be made before any justice of the peace or other officer authorized to administer oaths. (70 v. 107.)

(4105-22) **Sec. 4.** [Division of unsold lands into tracts, etc.; tracts to be numbered and appraised.] All the unsurveyed and unsold lands in said military district, not occupied as aforesaid, shall be divided by said trustees into such tracts, not exceeding five hundred acres in any one boundary, as will be most advantageous, reference being had to the quality of said lands and the uses to which they will be applied; the boundaries to all such tracts and divisions shall be accurately surveyed, and the lines of each tract plainly marked, and substantial stone monuments firmly placed at the principal corners. The character of the soil, water courses, elevation of hills, timber, ledges, or stratas of the Waverly building stone, iron ore, fire clay, and limestone, shall be fully noted by the surveyors on their plats and in their field books. All the tracts so divided and surveyed shall be numbered in consecutive order, commencing with the tracts in Adams county, and so continuing until all said lands in said district shall be platted and numbered; which number shall be shown upon the plats, and the said plats shall correctly indicate all township lines. The said lands, when so divided, surveyed and numbered, shall be appraised in separate tracts at their true value in money, by three qualified freehold residents in said state, to be summoned by said trustees, or any committee of theirs. Said appraisers before entering upon their duties, shall take and subscribe an oath before competent authority honestly and impartially to appraise all such lands, and to perform all other duties in relation thereto; they shall each be paid two dollars a day for their services, and their expenses allowed them; they shall make due return of all their appraisements to said trustees, which, with all said plats and surveys, shall be delivered by them to the auditor of state, and the same shall be recorded in the office of said auditor in suitable books to

be provided for such purpose ; which, with all such original plats, surveys, and papers, shall form a part of the public records of the state in the land department of said office. (70 v. 107.)

(4105-23) Sec. 5. [To be sold at private or public sale; contracts of sale to be recorded, etc.] And the said trustees are hereby authorized and required to sell all of said lands at public or private sale, at a price not less than the appraised value thereof, on such terms for cash and credit as may be agreed upon between the purchaser and said trustees, or any authorized agent of theirs; provided, that the first payment shall, in every case, be not less than one-third of the appraised value of such tract; all deferred payments shall bear six per cent. interest, to be paid annually, and said trustees may, in their discretion, extend subsequent annual payments through a period not exceeding five years. All public sales of said lands shall be by auction, at the front door of the court house of the county in which these lands so offered lie, after having been advertised five consecutive weeks in a newspaper, published and generally circulated in such county; such notices of sale shall contain a sufficient description of the premises to clearly identify the same, with a statement of the terms of payment and the amount of appraisement, and all such public sales shall be made at such times as said trustees shall deem expedient; and in case such land or any tract thereof shall not sell for the amount of the appraisement at such public sale, then upon the same being again offered as aforesaid at public sale, the same may be sold for any sum not less than three-fourths of the appraisement; provided, that no trustee of said college or appraiser of said land shall be the purchaser of any of said lands at any such sale or sales, either directly or indirectly. The said trustees shall cause all contracts for the sale of said lands to be printed or written in a book or books, stating the consideration and terms of all sales, which said contracts shall be signed in duplicate by the said trustees or any authorized agent of theirs, and by the purchaser or purchasers, one copy of which shall be preserved in said book, and the other shall be delivered to the purchaser at the time the same shall be signed; and every purchaser shall execute his promissory note or notes, with interest, payable as aforesaid, for all deferred payments, which notes shall be non-negotiable, and payable to said college at such place or places as may be directed by said trustees; and upon full payment being made by the purchaser, his heirs or assigns, for any such land, every such person shall be entitled to receive a conveyance therefor in fee simple by deed of said trustees, executed by the president of the board, under the corporate seal of said college; and all lands disposed of under the provisions of this act, shall be returned by said trustees to the auditors of the counties in which they are situate, and by them be placed on the duplicate for taxation. (70 v. 107.)

(4105-24.) [Trustees of Ohio State University may erect residences for faculty.] The proceeds of the sales of such lands, or so much thereof as may be necessary, after the payment out of the same of all the necessary expenses of survey and sale remaining uncertified into the treasury of said state, may be used by said trustees in building and maintaining upon the lands of said university a suitable number of houses, adapted to use as family residences, for the use of members of the faculty of said university, for which use a fair and reasonable rent shall be paid to said university. Said buildings shall be erected under the provisions of title six of the Revised Statutes of Ohio; and the said trustees shall annually report to the governor a detailed statement of receipts and disbursements in the execution of the trusts under the provisions of this act. (1882, April 17: 79 v. 144; Rev. Stat. 1880; 70 v. 107.)

(4105-25) Sec. 7. [Acts repealed.] The act entitled an act to sell lands ceded to the state of Ohio by the Congress of the United States by act of Congress, approved February 18, 1871, passed March 26; 1872, and the act supplementary thereto and amendatory thereof, passed April 29, 1872, be and they are hereby repealed; provided, that the passage of this act shall in no wise affect the validity of the transactions of said board of trustees, or rights vested in any person, under the provisions of said acts; and this act shall take effect and be in force from and after its passage. (70 v. 107.)

(4105-26) Sec. 1. [Ohio State University; establishment of a school of mines; course of study; apparatus, etc.] The trustees of the Ohio State University be and they are hereby required to establish in said university, a school of mines and mine engineering, in which shall be provided the means for studying scientifically and experimentally the survey, opening, ventilation, care and working of mines; and said school shall be provided with a collection of drawings, illustrating the manner of opening, working, and ventilating mines, and with the necessary instruments for surveying, measuring air, examining and testing the noxious and poisonous gases of mines, and also with the models of the most improved machinery for ventilating and operating all the various [kinds] of mines with safety to the lives and health of those engaged. Said school shall also be provided with complete mining laboratories for the analysis of coals, ores, fire-clays and other minerals, and with all the necessary apparatus for testing the various coals, ores, fire-clays, oils, gases, and other minerals. (1888, April 4: 85 v. 155; Rev. Stat. 1880; 74 v. 216.)

(4105-27) Sec. 2. [Employment and duties of instructors; cabinet of specimens to be kept.] Said trustees shall employ competent persons to give instruction in the most improved and successful methods of opening, [and operating] surveying and inspecting

mines, including the methods and machinery employed for extracting coal, ore, fire-clay, oil, gas and other minerals from the pit's mouth and for facilitating the ascent and descent of workmen, the draining and freeing of mines from water, the causes of the vitiation of air, the quantities of fresh air required under various circumstances, natural ventilation, mechanical ventilation by flues and fans, and other ventilating machinery, the use of air engines, air compressors and coal cutting machinery; also instruction in the various uses of coals, ores, fire-clays, oils, gases and other minerals, and the methods of testing, analyzing and assaying such minerals; also the methods employed in metallurgical and other processes in the reduction of ores and in determining the qualities of metals, particularly iron and steel, as shown by practical and laboratory tests; and there shall be kept in a cabinet properly arranged for ready reference and examination, suitably connected with said school of mines samples of the specimens from the various mines in the state, which may be sent for analysis, together with the names of the mines and their localities in the counties from which they were sent, and the analysis and a statement of their properties attached (it shall also be his duty to furnish analysis of all minerals found in the state and sent to him for that purpose by residents of this state). (1888, April 4: 85 v. 155; Rev. Stat. 1880; 74 v. 216.)

(4105-28) Sec. 3. [Appropriation.] There is hereby appropriated out of the general revenue fund the sum of three thousand five hundred dollars to be expended in the equipment, support and maintenance of said school of mines as provided for in the first and second sections of this act. (1888, April 4: 85 v. 155; Rev. Stat. 1880; 74 v. 216.)

(4105-29) Sec. 1. [Support of Ohio State University law school.] The board of trustees of the Ohio State University are hereby authorized and empowered to appropriate annually, for the period of ten years, to the support and maintenance of the school of law of the Ohio State University, out of the fund derived under section 3951 of the Revised Statutes of Ohio, amended March 20, 1891 (88 O. L., 159), a sum not exceeding five thousand dollars, in addition to the sum derived from the tuition fees of the students in said school of law. (90 v. 253.)

(4105-30) Sec. 1. [Ohio State University department of ceramics.] The trustees of the Ohio State University be and they are hereby required to establish in said university a department of ceramics, equipped and designed for the technical education of clay, cement and glass workers, in all branches of the art which exist in this state, or which can be profitably introduced and maintained in this state from the mineral resources thereof, including the manufacture of earthenwares, stonewares, yellowwares, whitewares, china, porcelain and ornamental pottery, also the manufacture of sewer pipe, fireproofing, terracotta, sanitary claywares, electric conduits

and specialties, firebricks and all refractory materials, glazed and enameled bricks, pressed bricks, vitrified paving material, as well as the most economic methods in the production of the coarser forms of bricks used for building purposes; also the manufacture of tiles used for paving, flooring, decorative wall-paneling, roofing and draining purposes, also the manufacture of cement, concrete, artificial stone and all kinds of glass products and all other clay industries represented in our limits. (91 v. 164.)

(4105-31) **Sec. 2. [Special instruction.]** Said department shall offer special instruction to clay workers on the origin, composition, properties and testing of clays, the selection of materials for different purposes, the mechanical and chemical preparation of clays, the laws of burning clays, the theory and practice of the formation of clay bodies, slips and glazes, and the laws which control the formation and fusion of silicates. (91 v. 164.)

(4105-32) **Sec. 3. [Laboratory.]** Said department shall be provided with an efficient laboratory designed especially for the practical instruction of clay workers in the list of subjects enumerated in the second section of this act, and also equipped to investigate into the various troubles and defects incident to every form of clay working, which cannot be understood or avoided except by use of such scientific investigation. Said laboratory shall be equipped with apparatus for chemical analysis, with furnaces and kilns for pyrometric and practical trials, with such machinery for the grinding, washing and preparation of clays for manufacture as is consistent with the character of the department. (91 v. 164.)

(4105-33) **Sec. 4. [Expert.]** Said trustees shall employ to conduct this department of ceramics a competent expert, who shall unite to the necessary education and scientific requirements, a thorough practical knowledge of clay working, and not less than two years' actual experience in some branch of the art. It shall be his duty to teach the theoretical part of the subject and to conduct the laboratory for the instruction of students, and also to prosecute such scientific investigation into the technology of the various clay industries as may be practicable, and from time to time to publish the results of his investigations in such form that they will be accessible to the clay workers of the state for the advancement of the art. (91 v. 164.)

(4105-34) **Sec. 5. [Appropriations.]** There shall be hereafter appropriated out of the general revenues of the state the sum of five thousand dollars, to be expended in the organization, equipment and maintenance of said department, as provided for in the first four sections of this act, for the current year, and there shall be appropriated from the same fund the sum of two thousand five hundred

dollars annually for two years for the salary, supplies and all other expenses of maintenance of said department. (91 v. 164.)

(4105-35) **Sec. 2.** [Written analysis to be furnished by professor of chemistry at agricultural college.] It shall be the duty of the professor occupying the chair in the chemical and mechanical department of the Ohio agricultural and mechanical college, upon application, to make and give a written analysis of such artificial fertilizers as may be furnished to him for that purpose. (75 v. 91.)

(4105-36) **Sec. 1.** [To be known as "The Ohio State University."] The educational institution heretofore designated as the Ohio Agricultural and Mechanical College shall be known and designated hereafter as "The Ohio State University." (75 v. 126.)

(4105-37) **Sec. 2.** [To be governed by board of seven trustees; how and by whom appointed.] The government of said university shall be vested in a board of seven trustees, who shall be appointed by the governor of the state, with the advice and consent of the senate; but no trustee, or his relation by blood or marriage, shall be eligible to any professorship or position in the university, the compensation for which is payable out of the state treasury, or said college fund. (75 v. 126.)

(4105-38) **Sec. 3.** [Their terms of office; to be paid their expenses while engaged in the discharge of duties.] The members of said board of trustees and their successors shall hold their offices for the term of seven years each; provided, that the trustees first appointed under the provisions of this act shall hold their terms for one, two, three, four, five, six, and seven years, respectively, to be fixed by the governor in their commissions. In case a vacancy shall occur from death or other cause, the appointment shall be for the unexpired term. The trustees shall not receive any compensation for their services, but they shall be paid their reasonable and necessary expenses while engaged in the discharge of their official duties. (75 v. 126.)

(4105-39) **Sec. 4.** [Powers and duties of board.] The board of trustees shall have power, and it is made their duty, to collect, or cause to be collected, specimens of the various cereals, fruits, and other vegetable products, and to have experiments made in their reproduction upon the lands of the university, and to make report of the same, from year to year, together with such other facts as may tend to advance the interests of agriculture. (75 v. 126.)

(4105-40) **Sec. 5.** [Collections of specimens.] The board of trustees shall have power, and it is hereby made their duty to secure and keep in the said university a collection of specimens in mineralogy, geology, zoology, botany, and other specimens pertaining to natural history and the sciences; and it shall be the duty of the president of the university

to collect and deposit in the said university, in such manner as shall be directed by the trustees, a full and complete set of specimens as collected by him and his assistants, together with a brief description of the character of the same, and were obtained; and the said specimens shall be properly classified and kept for the benefit of said university. (75 v. 126.)

(4105-41) **Sec. 6. [Meetings of board of trustees.]** The first meeting of the members of the board shall be called by the governor, as soon after the appointment of said board as convenient, to be held at said university, in Columbus, Ohio. All succeeding meetings shall be called in such a manner, and at such times as the board may prescribe. The said board shall meet at least three times annually, and at such other times as they may think necessary for the best interests of the said university. A majority of the board of trustees present at any meeting shall constitute a quorum to do business: provided, a majority of all the board shall be required to elect or remove a president or professor. (75 v. 126.)

(4105-42) **Sec. 7. [Annual report of trustees; fiscal year; printing and distribution of report.]** The board of trustees shall cause to be made on or before the first of October of each year a report to the governor of the condition of said university; the amount of receipts and disbursements; and for what the disbursements were made; the number of professors, officers, teachers, and other employes and the position and compensation of each; the number of students in the several departments and classes, and the course of instruction pursued in each; also an estimate of the expenses for the ensuing year; a statement showing the progress of the university, recording any improvements and experiments made, with their costs and the results, and such other matters as may be supposed useful. Said annual report shall be for the year ending June 30, and the said Ohio State University is hereby exempted from the provisions of section 172, Revised Statutes of Ohio. There shall be printed under the provision of section 58 of the Revised Statutes of Ohio, as amended May 1, 1891 (O. L. v. 88, p. 498), five thousand copies of the said annual report, to be distributed by the trustees in such manner as they shall deem best for the interest of said university. The president of said university shall transmit by mail one copy to the secretary of the interior, one copy to the secretary of agriculture, and one copy to each of the colleges which are, or may be endowed under the provisions of the act of congress of July 2, 1862. (90 v. 292; 75 v. 126.)

(4105-43) **Sec. 8. [Funds from the sale of land script to form part of irreducible debt; and interest of same paid to university.]** All funds derived from the sale of land script issued to the state of Ohio by the United States, in pursuance of the aforesaid act of congress, together with the interest accumulated thereon, shall constitute a part of the irreducible debt of this state, the interest upon

which, as provided by the act of February 10, 1870 (O. L., vol. 67, p. 15), shall be paid to the university by the auditor of state, upon the requisition of the commissioners of the sinking fund, issued on the certificate of the secretary of the board of trustees, that the same has been appropriated by said trustees to the endowment, support, and maintenance of the university, as provided in the act of congress aforesaid. (75 v. 126.)

(4105-44) **Sec. 9.** [Compensation of president, professors, teachers, etc.] That said board of trustees shall fix the compensation for the president, professors, teachers and all other employes of the university; provided, that the compensation for the services of the professors shall not exceed twenty-five hundred dollars each per annum. (91 v. 74; 75 v. 126.)

(4105-45) **Sec. 10.** [Branches prescribed at Ohio State University.] It shall be the duty of the board of trustees, in connection with the faculty of the university, to provide for the teaching of such branches of learning as are related to agriculture and the mechanic arts, mines, and mine engineering, and military tactics, and such other scientific and classic studies as the resources of the fund will permit. (1880, April 15; 77 v. 227; Rev. Stat., 1880; 75 v. 126.)

(4105-46) **Sec. 1.** [Computation and investment of interest.] The auditor of state be and is required to compute the interest which has accrued and will accrue on the agricultural college scrip fund since the same has been sold, to July first, one thousand eight hundred and seventy, compounding the same by semi-annual rests on the first day of January and the first day of July in each year; and on the fifteenth day of June eighteen hundred and seventy to transfer the sum so arising to the said college fund, and invest the same in the interest-bearing bonds of the state, in the same manner as the principal of the said fund is now invested. (67 v. 15.)

(4105-47) **Sec. 2.** [How interest invested.] That on the first day of July, eighteen hundred and seventy, and every six months thereafter (viz: on the first day of January and July, respectively) the auditor of state shall invest the interest of said funds falling due in the same manner as the principal now invested. (67 v. 15.)

(4105-48) **Sec. 1.** [Trustees of Ohio State University authorized to make deeds.] As soon as the board of trustees of the Ohio State University accepts the provisions hereinafter made, it is hereby authorized and required to execute and deliver upon demand, a deed of conveyance to the parties in possession under claim of title of any unpatented survey or part thereof, in said Virginia Military District; provided, however, that all applicants for such deed must furnish said trustees with a certified copy of the deed under which they claim, and if required, a certified copy of the unpatented survey in which their lands

are situate, as the necessary evidence to satisfy the board that the same has never been patented, but has been occupied and improved by the said parties in possession or those under whom they claim title, for more than twenty-one years. Provided, also, that each applicant shall pay the board of trustees the sum of two dollars, as the cost of preparing and executing such deed. (86 v. 92.)

(4105-49) **Sec. 2. [Duty of auditor of state.]** The auditor of state shall add the sum of one dollar per acre, reckoned by the number of acres of land in each actual survey for all conveyances so made to that part of the irreducible debt of the state, which forms the endowment of said Ohio State University; provided, that in cases where suit has been brought for the recovery of said lands, persons demanding deeds of release, shall pay all court costs of such suits. (86 v. 92.)

(4105-50) **Sec. 1. [Relief of persons who wrongfully paid for lands in Virginia Military District; duty of auditor of state.]** All persons who were in possession of lands in the Virginia Military District under claim of title of an unpatented survey or part thereof, said lands having been occupied and improved by said persons in possession or those under whom they claim title for more than twenty-one years and were compelled by suit, or the fear thereof, to pay the Ohio State University for said lands, are hereby authorized to present a statement of the amount of money so paid by them, together with all the facts relating to the land held by them and their title thereto, to a board composed of the secretary of state, auditor of state and attorney general, who are hereby authorized and empowered to examine such statements and call for and examine such other testimony as they see fit, and if upon such examination said board are satisfied that said persons are justly entitled to relief as those persons were who have obtained relief under the provisions of the aforesaid act, then said board shall determine how much said party has wrongfully paid and issue an order to the auditor of state directing him to draw his warrant on the treasurer of state for the said amount in behalf of the person filing said statement; provided, that where such claims have been heretofore as (or) shall hereafter be allowed by said board, the auditor of state shall add the amount thereof to that part of the irreducible debt of the state which constitutes the endowment fund of said Ohio State University. (91 v. 375; 90 v. 221.)

(4105-51) **Sec. 2. [Appropriation.]** That there be and is hereby appropriated, out of any money in the state treasury accredited to the fund of the Ohio State University, the sum of twelve hundred and ninety-six dollars to pay said warrants. (90 v. 221.)

(4105-52) **Sec. 3. [Costs of obtaining evidence.]** That persons filing such statements shall pay all the costs incurred in obtaining evidence. (90 v. 221.)

(4105-53) **Sec. 4.** [Report to general assembly.] Said board shall report all its proceedings to the general assembly. (90 v. 221.)

WILBERFORCE UNIVERSITY.

Members of the legislature not eligible to be trustees; Sec. 18-1, R. S.

(4105-54) **Sec. 1.** [Normal and industrial department at Wilberforce University.] There shall be established and maintained at Wilberforce University, in Greene county, Ohio, a combined normal and industrial department. (84 v. 127.)

(4105-55) **Sec. 2.** [Board of trustees; appointment by governor, etc.] To carry out the purposes of this act, there shall be and hereby is created a board of nine trustees to be known as "the board of trustees of the combined normal and industrial department at Wilberforce University," five shall be appointed by the governor, by and with the consent of the senate, and three shall be chosen by the board of trustees of said university. The president of the university shall be ex-officio a member of said board. The trustees so to be appointed by the governor, as aforesaid, shall be appointed, on or before the first day of May, 1896, and they shall hold their offices respectively as follows: One for one year, two for two years, and two for four years the term of such to begin to run from July first, 1896; said term shall be designated by the governor in his message of appointment to the senate and in the commission issued to said trustees. At the session of the senate next preceding the expiration of the term of any trustee, the governor shall appoint his successor for the term of four years; and every appointment of the governor under this act shall be submitted to the senate for confirmation. (92 v. 275; 89 v. 368; 87 v. 215; 84 v. 127.)

(4105-56) **Sec. 3.** [Choosing of trustees by university board.] The three trustees to be chosen as aforesaid by the board of trustees of said university shall be chosen at the first regular meeting of said board in June, 1892, after the passage of this act; and the three so chosen at such meeting, shall hold their offices, respectively, as follows: One for one year, one for two years, and one, for three years, and the term of each to begin to run from the third Thursday in June, 1892. In anticipation of the expiration of the term of any trustee so chosen, the said university board shall, annually thereafter at its regular meeting choose his successor, who shall hold his office for (the) term of three years. (89 v. 368; 84 v. 127.)

(4105-57) **Sec. 4.** [Vacancies.] In case a vacancy in that portion of the board so appointed by the governor or chosen by the university board shall occur from death, resignation, or other cause, the appointment or selection to fill such vacancy shall be made in the one case by the governor, and in the other by the executive board of said university for the unexpired term. (84 v. 127.)

(4105-58) Sec. 5. [Names of trustees chosen by university board to be certified to governor.] It shall be the duty of the secretary of the said university, immediately upon choice being made by the university board of three trustees as aforesaid, to certify to the governor, under the seal of said university, the names of the persons so chosen as trustees under this act, with their terms, respectively; and also the name of the person chosen by said executive board at any time to fill a vacancy. (84 v. 127.)

(4105-59) Sec. 6. [Meetings of trustees; their expenses.] The board of trustees created under this act shall meet in regular session at said university twice a year; the first meeting shall be on the third Thursday in June, and the second on the first Thursday in November of each year; but other meetings may be held at such places and times as a majority of the board may determine. The said trustees shall receive no compensation, but shall be reimbursed their traveling and other reasonable and necessary expenses out of appropriations under this act. (89 v. 368; 84 v. 127.)

(4105-60) Sec. 7. [Powers and duties of trustees.] It shall be the duty of said board of trustees created under this act to take, keep and maintain exclusive authority, directions, supervision and control over the operations and conduct of said normal and industrial department, so as to assure for it the best attainable results with the aid hereby secured to it from the state. Said board shall determine the branches of industry to be pursued, purchase, through a suitable and disinterested agent, the necessary means and appliances, select a superintendent for the industrial branch of the department, fix his salary and prescribe his duties and authority. The expenditures of all moneys appropriated under this act for carrying out its purposes and provisions, shall be made only under such regulations and for such specific purposes not herein provided for, as the board of trustees of said department shall establish; but no money hereby appropriated by the state shall be used at any time for any purpose not in direct furtherance and promotion of the objects of the department. (84 v. 127.)

(4105-61) Sec. 8. [Non-sectarian character of department.] No sectarian influence, direction or interference in the management or conduct of the affairs or education of said department shall be permitted by its board; but its benefits shall be open to all applicants of good moral character and within the limitations of age determined by said board. (84 v. 127.)

(4105-62) Sec. 9. [Payment to university of state appropriations; bond of treasurer.] Upon the certificate of the board of trustees of said department that the necessary steps have been taken by the board of trustees of said university to co-operate with the department trus-

tees in carrying out the purposes of this act by granting the use of its buildings, grounds and educational facilities, there shall be paid to the treasurer of said department, semi-annually, one-half of such amounts as may be annually appropriated by the general assembly for the purposes therein named. The treasurer of said department shall give to the state of Ohio a bond to be approved by the attorney general in the sum of twenty thousand dollars, conditioned that he shall faithfully discharge his duties and account for any money coming into his hands from the state of Ohio. (92 v. 275; 84 v. 127.)

(4105-63) **Sec. 10.** [Annual report, and estimate of appropriations.] The board of trustees shall cause to be made on or before the first day of December, eighteen hundred and eighty-eight (and) each year thereafter, a report to the governor of the condition, progress and results of said department, with an estimate of what appropriation shall be required to secure the objects of this act. (84 v. 127.)

(4105-64) **Sec. 11.** [Designation of pupils by members of general assembly.] Each senator and representative of the general assembly of the state of Ohio may designate one or more youth resident of his district who shall be entitled to attend the said normal and industrial department free of tuition. (92 v. 275; 84 v. 127.)

(4105-65) **Sec. 12.** [Appropriations; application of revenues.] For the purpose of carrying out the provisions of this act, there shall be levied annually a tax on the grand list of taxable property of the state, which shall be collected in the same manner as other state taxes, and the proceeds of which shall constitute "the fund of the combined normal and industrial department at Wilberforce university." The rate of such levy shall be designated by the general assembly at least once in two years, and if the general assembly shall fail to designate the rate for any year, the same shall be for the said fund of the "combined normal and industrial department of Wilberforce university" one-hundredth of one mill upon each dollar of valuation of such taxable property. The same shall be paid to the treasurer of the normal and industrial department at Wilberforce University in accordance with the provisions of section 12 of said act. All revenue arising from tuitions, sales of products or otherwise under the aforesaid department shall be applied by its board of trustees to defray its expenses, or to increase its efficiency, a strict account of which shall be kept by the department board, and accompany the report to the governor. (92 v. 156; 84 v. 127.)

(4105-66) **Sec. 1.** [Additional appropriations for Wilberforce University.] There is hereby appropriated out of any moneys in the treasury to the credit of the general revenue fund not otherwise

appropriated, for combined normal and industrial department at Wilberforce University, two thousand dollars, the same being the balance due said institution under the provisions of an act passed March 19, 1887. And this amount shall be in full of all claims against the state by said university. (86 v. 392.)

CHAPTER 15.

SCHOOLS SPECIALLY ENDOWED.

SECTION.

4105-67. Courts of common pleas to appoint trustees for schools specially endowed; powers of trustees.

4105-68. Filling vacancies.

4105-69. Duties of trustees.

SECTION.

4105-70. Same; oath; bond.

4105-71. Accounts to be rendered.

4105-72. Visitors.

4105-73. When to take effect.

(4105-67) **Sec. 1. [Courts of common pleas to appoint trustees for schools specially endowed; powers.]** Whenever any person shall, by deed, devise, gift or otherwise, set apart any lands, moneys or effects, as an endowment of a school or academy, not previously established, and shall not provide for the management of such school or academy, the court of common pleas of the proper county shall appoint five trustees, who shall have the control and management of the property, moneys, and effects, so set apart, and of the school or academy thus endowed, and shall hold their offices for five years, and until their successors are elected and qualified; but in making the first appointment the court shall appoint one trustee for one year, one for two years, one for three years, one for four years, and one for five years. The trustees shall be a body corporate, with perpetual succession, and by such name as may be ordered by the court making the first appointment; may sue and be sued; have a corporate seal and the same alter or change at pleasure, and may hold all kinds of estates, real and personal, and mixed, which they may acquire by purchase, donation, devise or otherwise. (53 v. 33; S. & C. 1383.)

(4105-68) **Sec. 2. [Filling vacancies; removal.]** The said court shall annually appoint one trustee, to fill the vacancy then occurring; ring; and at any other time fill vacancies that may occur from any cause, for the unexpired term; said court shall also have power upon sufficient cause shown, reasonable notice of the time and place of hearing having been given to the party interested, remove any trustee, and may, until a hearing be had, suspend a trustee in the exercise of his office. (53 v. 33; S. & C. 1383.)

(4105-69) **Sec. 3. [Duties of trustees.]** The trustees shall have power to establish, from time to time, rules and regulations for the management and safekeeping of the property, moneys, and effects, belonging to the trust, and the expenditure of the income thereof, and also for the management and government of the school or academy; which rules and regulations shall not be inconsistent with the terms of the deed, devise or gift, creating the endowment, or with the laws of this state; they shall not, at any time, or for any cause, incur any debt or liability, beyond the net income of the trust property, moneys, and effects, or use or appropriate the same, otherwise than to invest for the purpose of

income, any part of the principal thereof, unless expressly authorized so to do by the terms of the deed, devise or gift, creating the endowment of trust. (53 v. 33; S. & C. 1383.)

(4105-70) **Sec. 4. [Same; oath; bond.]** The trustees shall, immediately after their appointment, organize by appointing a president, secretary, and treasurer, from their own number, and shall severally take and subscribe an oath to faithfully discharge the duties of trustees, and deposit the same with the county auditor. They shall, also, before taking possession of the property, moneys, or effects, constituting the endowment or trust, severally give bond, in such sum as the court may require, with two or more sufficient sureties, to be approved by a judge of said court, whose approval shall be endorsed on the bonds, conditioned for the faithful management of the property, moneys, and effects, intrusted to them and accountability therefor in such form as the court or judge may require; and the court may, from time to time, require additional bonds and surety, as may appear necessary for the preservation of the trust estate. The bonds required shall be payable to the state of Ohio, and deposited in the office of the county auditor for safe keeping. (53 v. 33; S. & C. 1383.)

(4105-71) **Sec. 5. [Accounts to be rendered.]** The trustees shall, on the second Monday of September, in each year, and at such other times as the court may require, render a full and accurate account, statement, and exhibit, of the condition of the school or academy under their management, and the condition of the trust estate and funds; and shall cause the same to be published in such form as the court may direct; which account, statement, and exhibit, shall be sworn to by the president, secretary, and treasurer, or some two of them. (53 v. 33; S. & C. 1383.)

(4105-72) **Sec. 6. [Visitors.]** The court of common pleas of the proper county shall, annually, at the first session after the second Monday in September, appoint three competent and disinterested persons, who shall have authority to visit any such school or academy and examine the same, together with the condition of the trust estate or endowment, and shall report thereon to the court making the appointment. The court shall also authorize such other visitations and examinations as may appear to be necessary. (53 v. 33; S. & C. 1383.)

(4105-73) **Sec. 7. [When to take effect.]** This act shall apply to endowments heretofore created, as well as to those hereafter created, and shall take effect from and after its passage. (53 v. 33; S. & C. 1383.)

TITLE II.

CHAPTER 14.

COLLEGES, AND INSTITUTIONS OF LEARNING.

SECTION.

3726. Certain corporations may appoint a faculty and confer degrees.
3727. May hold donated property in trust.
3728. Who constitute the faculty; its powers.
3729. May teach mechanics and agriculture.
3730. May change stock into scholarships.
3731. Location may be changed, and how.
3732. When and how college endowment fund diverted.
3733. How vacancies in boards filled in certain cases.
3734. Certain corporations may increase their property; bonds.
3735. Statement to be made and filed.
3736. How certain boards may be constituted and governed.
3737. Trustees to be divided into classes.
3738. Term of office of trustees; how vacancies filled.
3739. When the board is to be enlarged.
3740. When the number in a class is to be reduced.
3741. A conference may become a patron by consent of other bodies.
3742. Patronizing bodies may appoint visitors.
3743. When the right of representation shall cease.
3744. What action the board must first take.
3745. Quorum; how constituted.
3746. Certain corporations may have benefit of subsequent provisions.
3747. Alumni may elect trustees and appoint visitors.
3748. Conduct of election.
3749. Returns of election, and certificates.
3750. Endowment fund corporation.
3751. How certain boards may be constituted and governed.
- 3751a. Increase in number of trustees of certain corporations.
- 3751b. Incorporation of colleges under ecclesiastical patronage; what articles shall contain.
- 3751c. Existing corporations may avail themselves of provisions of act; how.
3752. Classes and election of trustees; president ex-officio member of board; term; vacancies; increase in board.

SECTION.

3753. Assessments may be made against stockholders.
3754. Meeting of stockholders, and notice thereof.
3755. Meeting may fix amount of assessment.
3756. How much may be assessed, and collection thereof.
3757. The board of military academies; how constituted, etc.
3758. Board of visitors; how constituted.
3759. Duties of board of visitors.
3760. How the term of office of trustees and directors may be fixed.
3761. Certain corporations may change location.
3762. Sale and distribution of the property of certain corporations.
- 3762a. Certain colleges, whose articles of incorporation are not on file in the office of the secretary of state, may file same there and amend.
- 3762b. Colleges may change name and purpose; when; procedure.
3763. Under what restrictions medical colleges and teachers may receive bodies for dissection; body to be delivered to claimant; interment of body after examination or dissection; notification to relatives; penalties.
3764. Penalty for having unlawful possession of corpse.
3765. (Repealed.)
3766. (Repealed.)
3767. Organic rules which may be prescribed in certain articles of incorporation.
3768. May add to the objects of the corporation; acceptance of statutory provisions.
- 3768-1. Authorizing certain mechanics' institutes to borrow money; liability of directors and trustees.
- 3768-2. Directors not personally liable.
3769. Accounts of receipts and disbursements.
3770. Trustees ineligible to other office.
3771. Attorney general may, by action, enforce duties of officers.
- 3771a. How number of trustees of certain colleges increased.

For "an act to aid the establishment and maintenance of a combined normal and industrial department at Wilberforce University, Greene county, Ohio," see Sec. 4105-55.

For various universities, see Sec. 4095.

Sec. 3726. [Certain corporations may appoint a faculty and confer degrees.] The trustees of a college, university, or other institution of learning incorporated for the purpose of promoting education, religion, morality, or the fine arts, which has acquired real or personal property of the value of five thousand dollars, and which has filed in the office of the secretary of state a schedule of the kind and value of such property, verified by the oaths of the trustees, may appoint a president, professors, and tutors, and any other necessary agents and officers, and fix the compensation of each, and may enact such by-laws, not inconsistent with the laws of this state or of the United States, for the government of the institution, and for conducting the affairs of the corporation, as they may deem necessary; and may, on the recommendation of the faculty, confer all such degrees and honors as are conferred by colleges and universities of the United States, and such others having reference to the course of study, and the accomplishments of the student, as they may deem proper. (50 v. 128, § 1; 51 v. 403, §§ 2, 3; S. & C. 266, 270.)

Sec. 3726 made partially inoperative in 84 v. 63, 65.

Sec. 3727. [May hold donated property in trust.] Any university, college, or academy, or the trustees thereof, may hold in trust any property devised, bequeathed, or donated to such institution, upon any specific trust consistent with the objects of the corporation. (50 v. 128, § 5; S. & C. 267.)

Where a subscription is made in writing and accepted, and liabilities are incurred on the faith of it, its collection cannot be defeated on the ground of the supposed want of a valuable or legal consideration. 16 O. S., 20.

Sec. 3728. [Who constitute the faculty; its powers.] The president and professors shall constitute the faculty of any incorporated literary college or university, and may enforce the rules and regulations enacted by its trustees for the government and discipline of the students, and suspend and expel offenders, as may be deemed necessary. (50 v. 128, § 6; S. & C. 267.)

Sec. 3729. [May teach mechanics and agriculture.] Any incorporated university, college, or academy may connect therewith, to be used as a part of its course of education, any mechanical shops and machinery, or lands for agricultural purposes not exceeding three hundred acres, to which may be attached all necessary buildings for carrying on the mechanical or agricultural operations of such institution. (50 v. 128, § 8; S. & C. 267.)

For "an act to authorize mechanics' institutes incorporated in this state prior to 1851 to borrow money and mortgage real estate therefor," see Sec. 3763-1.

Sec. 3730. [May change stock into scholarships.] Any company formed in pursuance of this title, or which now exists by virtue of any

special act of incorporation, the property of which is held as stock, and not derived by donation, gift, devise, or gratuitous subscription, may change its capital stock into scholarships, when it becomes necessary for the purpose of carrying out the object for which it was formed, in the manner provided in section thirty-two hundred and sixty-two. (50 v. 128, §§ 9, 10; S. & C. 268.)

Sec. 3731. [Location may be changed, and how.] A college, university, or other institution of learning, now existing by virtue of any act of incorporation, or that may hereafter become incorporated for any of the purposes specified in this chapter, may, if three-fourths of the trustees or directors thereof deem the same proper, or if the institution is owned in shares, or by stock subscribed or taken, by a vote of the holders of three-fourths of the stock or shares, change the location of such institution, convey its real estate, and transfer the effects thereof, and invest the same at the place to which such institution may be removed; but no removal shall be ordered, and no vote taken thereon, until after publication in the manner provided in the last section, in which notice shall be fully set forth the place to which it is proposed to remove such institution, and, in case of removal, a copy of the proceedings of such meeting shall be filed with the secretary of state. (52 v. 77, § 12; S. & C. 268.)

Sec. 3732. [When and how college endowment fund diverted.] The trustees of a corporation incorporated for the purpose of creating, holding, and managing a college endowment fund, the articles of incorporation of which provide that the fund may be applied to any object not inconsistent with the purposes of education different from that particularly specified therein, may apply to the court of common pleas in the county where the corporation is located for permission to make such change, designating particularly the purposes to which it is proposed to apply the funds; and the court, on being satisfied that such change is not inconsistent with the object of the original creation and institution of the fund, shall authorize and sanction the change. (51 v. 393, § 2; S. & C. 269.)

Sec. 3733. [How vacancies in boards filled in certain cases.] Whenever there occurs a vacancy, in whole or in part, in the board of trustees of an incorporated college, seminary, or academy, by reason of an amendment of the charter in such corporation, or from any other cause, and there is no provision of law for filling such vacancy, the governor shall, within three months after receiving information thereof, appoint the required number of trustees, one-third thereof to serve for one year, one-third to serve for two years, and one-third for three years. (75 v. 25, § 2.)

Sec. 3734. [Certain corporations may increase their property; bonds.] A college, university, academy, seminary, or other institution

devoted to the promotion of education, now existing by virtue of any special act of incorporation, or organized under the provisions of any law, whose property is derived and held by donation, gift, purchase, devise or gratuitous subscription, and the amount of which, or the income arising therefrom, is limited by such special act, or by the articles of association adopted by such institution, may receive, acquire, possess and hold hereafter any amount of property, real, personal or mixed, which its board of directors or trustees shall deem it advisable for the institution to accept, and may, by its trustees, sell, dispose of and convey the same, but such property shall not be diverted from the express will of the donor, deviser or subscriber. The board of trustees of any such college, university, academy, seminary, or other institution devoted to the promotion of education, in anticipation of donations to be received and collections to be made, may, for the purpose of constructing, enlarging or adding to any college buildings or improvements, borrow such sum of money as they may determine necessary for such purpose, and may issue bonds therefor and secure the same by mortgage upon the property upon which such improvement is to be made, provided such property is not held by them under some specific trust. (90 v. 71; 53 v. 170, § 1; S. & C., 368.)

The creation of a fund with which to pay an indebtedness of an educational institution, is not a consideration, in law, for a written promise given by the maker to the institution with a view to contribute to that object. 41 O. S., 527.

Sec. 3735. [Statement to be made and filed.] Before any such institution shall be authorized to acquire and hold such additional property, the trustees thereof, at a regular meeting of their board, or at a special meeting called for that purpose, shall, from time to time, make and sign a statement specifying the amount of such additional property which they seek to acquire and hold, and shall set forth therein the purposes to which it is to be devoted, which statements shall be entered at large upon the record book of the trustees and be filed in the office of the secretary of state. (90 v. 72; 53 v. 170, § 2; S. & C., 368.)

Sec. 3736. [How certain boards may be constituted and governed.] The board of trustees of any university or college heretofore incorporated, and now under the patronage of four or more conferences or other religious bodies of any religious denomination, may accept the provisions of this and the nine succeeding sections, by resolution adopted at any regular meeting of the board, and entered upon the record of its proceedings; and after such acceptance the board shall in all respects be organized, constituted, regulated, and perpetuated, pursuant to and under said provisions; but no right acquired by any such board, or any such university or college, under its charter, or any law of this state, shall in any way, be affected by said provisions. (65 v. 188, § 1; S. & S., 106.)

Sec. 3737. [Trustees to be divided into classes.] At a meeting of such board held after a vacancy occurs therein it shall fill such vacancy, or if more than one vacancy has occurred, then one of them, by appointing the president of the university or college a trustee, and the president of such university or college shall, ex-officio, be a trustee perpetually thereafter; the board shall also, at such meeting, divide its number, excluding the said president, and including all vacancies except the one he is so appointed to fill, into classes, corresponding in number to the number of conferences or other religious bodies at the time patronizing such university or college, such classes to have in each an equal number of trustees, as near as may be; and the board shall assign one of such classes to each of the conferences or other religious bodies, and thereafter each may fill any and all vacancies in the class so assigned to it. (65 v. 188, § 2; S. & S., 106.)

Sec. 3738. [Term of office of trustees; how vacancies filled.] When the classes of trustees are formed, as provided in the preceding section, the term of office of one of the trustees in each of the classes, to be selected by lot in open session of the board of trustees, shall expire each year, and the persons thereafter elected as trustees shall act as such for a term of years equal in number to the number of trustees in any class, except as hereinafter provided; but the term of office of a trustee shall not expire during any meeting of the board which does not continue for more than two weeks; and vacancies which occur in any class of trustees otherwise than by the expiration of term of office shall be filled only for the remainder of the term. (65 v. 188, § 3; 70 v. 157, § 1; S. & S., 107.)

Sec. 3739. [When the board is to be enlarged.] If the number of the conferences or other religious bodies patronizing any such university or college, the board of trustees of which has been divided into classes as hereinbefore provided, be increased to not exceeding six, the board of trustees shall be enlarged to the extent of one additional class of trustees for each of such additional conferences or other religious bodies, such additional classes to have in each a number of trustees equal to the number in any one of the former classes; and each of such additional conferences or other religious bodies may elect, as members of the board, the number in its class, one for one year, one for two years and one for three years, and so on to the extent of the number; and each of such additional conferences or other religious bodies may fill any vacancy in its class. And such board of trustees composed according to the foregoing provisions and the provisions of section thirty-seven hundred and forty-seven of this chapter, without regard to the number of members so composing it, may increase its own numbers by the election of trustees at large, not exceeding the number of conferences or other religious bod-

ies co-operating with or patronizing such university or college, and may divide such trustees at large into classes, at its discretion. (89 v. 119; 65 v. 188, § 4; S. & S., 107.)

Sec. 3740. [When the number in a class is to be reduced.] If the number of such patronizing conferences or other religious bodies at any time exceeds six, the representation of each shall be reduced by lot, in open session of the board of trustees, to a class of three trustees, if they exceed that number, who shall thereafter be elected to serve as trustees for the term of six years, and in that case the term of office of one trustee in each class shall expire every second year. (65 v. 188, § 5; S. & S., 107.)

Sec. 3741. [A conference may become a patron by consent of other bodies.] Any conference or other religious body, not patronizing any particular university or college, may become such patronizing conference or religious body, by and with the consent of the conferences or other religious bodies at the time patronizing such university or college. (65 v. 188, § 6; S. & S., 107.)

Sec. 3742. [Patronizing bodies may appoint visitors.] Each conference or other religious body patronizing any particular university or college may, annually, appoint two visitors, and the board of trustees of a college or university may provide, at the time of its organization, by resolution adopted and entered on its records, for the appointment of two visitors by each conference or other religious body patronizing such college or university; and such visitors shall attend the meetings of the board of trustees of such university or college, and, with the trustees, constitute a joint board for the appointment and removal of all officers, professors, and instructors of the university or college. (73 v. 163, § 7; S. & S., 107.)

Sec. 3743. [When the right of representation shall cease.] If a conference or other religious body patronizing any university or college, and having a representation in its board of trustees, cease to exist, or cease to patronize such university or college, the right of such conference or other religious body to such representation shall cease, and its board of trustees shall be thereby and to that extent reduced in numbers. (65 v. 188, § 8; 73 v. 163; S. & S., 107.)

Sec. 3744. [What action the board must first take.] Before a conference or other religious body not represented in the board of trustees of any university or college shall be entitled to be represented therein, and before any conference or any other religious body represented therein shall be deprived of such representation as provided in the preceding section, the board shall declare, and cause to be entered in the record of its proceedings, that the conditions and contingencies hereinbefore provided for in that behalf have taken place. (65 v. 188, § 9; S. & S., 107.)

Sec. 3745. [Quorum; how constituted.] Eleven trustees shall constitute a quorum of the board of any such university or college, whatever the number of trustees constituting the board is or may become, if the number is more than twenty; and if the number is twenty or less, a majority thereof shall constitute a quorum. (65 v. 188, § 10; S. & S., 108.)

Sec. 3746. [Certain corporations may have benefit of subsequent provisions.] The board of trustees of any university or college which has accepted or hereafter accepts the provisions of the ten preceding sections, may accept the provisions of the three succeeding sections by resolution adopted at any regular meeting of the board, and entered upon the record of its proceedings, and thereafter the board, and the university or college, shall be subject to (the) provisions thereof. (69 v. 71, § 1.)

Sec. 3747. [Alumni may elect trustees and appoint visitors.] After such acceptance by the board of any university or college, the alumni thereof (composing the alumnaal association thereof) may elect as members of the board of trustees of such college or university, members of such alumnaal association, in numbers equaling the numbers of the conferences co-operating with or patronizing such university or college, and may divide such alumnaal trustees into classes, and perpetuate the same; and such alumni may, at the same time, elect as visitors members of their association equaling in numbers one-half of the numbers of the conferences or other religious bodies co-operating with or patronizing such university or college, and such visitors shall have the same powers and duties as visitors appointed by any conference or other religious body aforesaid; provided, that when women are members of the alumnaal association so electing, they shall be eligible as visitors; provided, further, that the board of trustees shall be judge of the validity of the election and the returns thereof, of trustees and visitors elected under this section. (89 v. 120; 81 v. 174; Rev. Stat. 1880; 69 v. 71, § 2; 76 v. 87, § 1.)

Sec. 3748. [Conduct of elections.] The election of trustees and visitors by the alumni shall be by ballot, and held each year, beginning the year after such acceptance, on the secular day next before the day of commencement of such university or college, at such place in a building on its grounds as may be designated by the president of the alumnaal association by written notice posted the day before the election in at least two public places on such grounds; and the polls shall be opened at the hour named in said notice, which shall not be later than three o'clock p. m., and shall be kept open for two hours thereafter. The election shall be conducted by three judges and two clerks, who shall be members of said association and be chosen by the members present at the

place of voting at the time for opening the polls, and they shall certify to the board of trustees the result of such election, with a list of the members voting thereat; each ballot shall contain the names of the persons voted for, the office which each is to fill and a designation of the term for which he is to serve. At such election all members of the alumnal association of such university or college shall be entitled to vote, and members not in attendance may exercise their right by sending ballots conformable to the foregoing provisions, with their names thereon indorsed, and addressed under seal to the president of such association. (89 v. 120; 69 v. 71, § 3.)

Sec. 3749. [Returns of the election, and certificates.] After the polls are closed the result shall be ascertained and certified to by the judges and clerks, and the person or persons, not exceeding the number to be elected as trustees, having received the highest number of votes for trustee or trustees, shall be declared elected as trustee or trustees as designated on the ballot, and the two persons who receive the highest number of votes for visitors shall be declared elected, but their terms of office shall not begin until after the final adjournment of the regular meeting of the trustees for that year; if any two or more persons receive an equal number of votes for the same office of trustee or visitor, one of them, as may be determined by lot by the judges, in the presence of all the electors who may wish to be present, shall be the trustee or visitor, and shall be so declared; and duplicate certificates of election shall be signed by the judges and clerks, and delivered by them, one to each of the persons elected, and the other, with the poll books duly certified by the judges and clerks, to the secretary of the board of trustees of the university or college, the next day after the election, which certificate he shall enter of record in the book containing the proceedings of the board of trustees. (69 v. 71, § 3.)

Sec. 3750. [Endowment fund corporations.] The trustees of a corporation incorporated for the purpose of creating a fund, the income of which is to be applied to the promotion of education, may receive subscriptions for membership in the corporation, and they, or a majority of them, by giving ten days' notice, by publication in the county where the corporation is located, may call a meeting of members to adopt by-laws, and elect not more than nine directors; each member shall have a vote for every amount by him subscribed equal to that in the articles of incorporation specified as necessary for membership, which may be cast in person or by proxy, but at no subsequent meeting may a member vote for or be eligible as a director who is in arrears to the corporation: and the trustees shall control the funds and disburse the income of the corporation as may be provided by its by-laws. (69 v. 173, §§ 1, 2, 3, 4, 5.)

Sec. 3751. [How certain board may be constituted and governed.] The board of trustees of any university, college, or other institution of learning, incorporated, and acting under the patronage of one annual conference or other religious body of any religious denomination, may accept the provisions of this and the succeeding section, by resolution adopted at any meeting of the board, and entered upon the record or journal of its proceedings; and after such acceptance the board shall be organized, constituted, regulated, and perpetuated as therein provided; but no right acquired by any such board, university, or other institution of learning, under its charter, or any law of this state, shall in any way be impaired or affected thereby. (69 v. 180, § 1.)

Sec. 3751a. [Increase in number of trustees of certain corporations.] The board of trustees of any university or college heretofore incorporated, and now under the patronage of one annual conference or synod or other religious body of any religious denomination, may increase the number of its trustees, not exceeding six; said additional trustees to be nominated by the collegiate alumni of such university or college from the collegiate alumni of three years' standing, for appointment or election by such patronizing conference or synod, under such regulations as may be prescribed by such board of trustees; provided, that the board of trustees of such university or college shall so determine to increase the number of its trustees and adopt such regulations for their nomination, by resolution adopted at any regular meeting of such board and duly entered on the record of its proceedings; and, provided further, that such patronizing or governing conference or synod shall consent to such increase of said board of trustees and the rules and regulations for the nomination of the same. And after such board of trustees is so increased by the election of any additional trustees, not exceeding six, the board of trustees shall in all respects be organized, constituted, regulated and perpetuated pursuant to and under the provisions of the charter and said provisions; but no rights acquired by any such board or any such university or college, under its charter or any law of this state, shall in any way be affected or impaired thereby. (91 v. 155.)

Sec. 3751b. [Incorporation of colleges under ecclesiastical patronage; what articles shall contain.] A corporation may be formed for the promotion of academic, collegiate or university education, under religious influences, and is hereby authorized and empowered to set forth in its articles, or certificate of corporation, as a part of the same, the name of the religious sect, association or denomination with which it proposes to be connected, and it is further authorized and empowered to grant any ecclesiastical body of such religious sect, association or denomination, whether the same be

a conference, association, presbytery, synod, general assembly, convocation or otherwise, the right to appoint its trustees or directors, or any number thereof; and it is further authorized and empowered to set forth in its articles or certificate of corporation, such other rights as to the administration of the purpose for which it is organized, and not inconsistent with the laws of this state or of the United States, as said incorporation may desire to confer upon said ecclesiastical body of such religious sect, association or denomination and the said ecclesiastical body of such religious sect, association or denomination shall possess and exercise all rights and powers to set forth in said articles or certificate of corporation. (94 v. 331.)

Sec. 3751c. [Existing corporations may avail themselves of provision of act; how.] Any corporation formed for the promotion of academic, collegiate or university education; under religious influences, which has been incorporated under the laws of this state, whether by special act of the legislature or otherwise, may avail itself of the provisions of the preceding section, as a part of its articles or certificate of incorporation, and may confer on any ecclesiastical body of such religious sect, association or denomination, as it is now, or proposes to be connected with, whether the same be a conference, association, presbytery, synod, general assembly, convocation or otherwise, any or all the rights, powers or privileges provided by the preceding section to be conferred on corporations hereafter organized, and may accept the provisions of such preceding section by a vote of the majority of the trustees of such corporation at any regular meeting; and when so accepted, a copy of said acceptance, certified by the secretary or clerk of its board of trustees or directors, shall be sent to the ecclesiastical body with which it is now or proposes to be connected; if such ecclesiastical body agree to accept the powers proposed to be conferred upon it, it shall certify its approval upon such certified copy sent to it, and the same shall thereupon be filed in the office of the secretary of state; and, when so filed, the same shall become and be a part of the charter of said corporation; and said ecclesiastical body of such religious sect, association or denomination, whether the same be a conference, association, presbytery, synod, general assembly, convocation or otherwise, shall possess and exercise all the rights and powers so set forth in said articles or certificate of corporation. (94 v. 331.)

Sec. 3752. [Classes and election of trustees; president ex-officio a member of the board; term; vacancies; increase in board.] After such acceptance the board shall certify the same to the patronizing conference or other religious body having the right to elect or appoint trustees of such university or other institution of learning, at the next meeting of such conference or other religious body; and

thereafter the board shall consist of twenty-one trustees elected or appointed, and the president of such university or other institution of learning, who shall be ex-officio a member of the board; such elected or appointed trustees shall be divided into three classes of seven members each. At the first election or appointment after such acceptance, one of such classes shall be elected or appointed for one year, one for two years and one for three years, and in all subsequent elections or appointments each of the classes of trustees shall be elected or appointed for three years, but no term of office of any such trustee shall expire during any meeting of the board which does not continue more than two weeks. Ten members of the board shall constitute a quorum, and all vacancies which occur in any class of trustees otherwise than by expiration of the term of office, shall be filled only for the remainder of the term; provided, that any such university or other institution of learning, having heretofore accepted the provisions of original sections 3751 and 3752, may increase its board of trustees by electing or appointing two additional members in each of the classes of trustees herein provided for. (1888, March 30: 85 v. 140, 141; Rev. Stat. 1880; 69 v. 180, §§ 2, 3; 70 v. 157, § 1.)

Sec. 3753. [Assessments may be made against stockholders.] The proportion that each stockholder of any college, academy, university, seminary, or other institution for the promotion of education, shall be required to pay to meet the debts and liabilities of the corporation, may be determined and collected in the manner provided by the three succeeding sections. (58 v. 20, § 1; S. & S. 108.)

Sec. 3754. [Meeting of the stockholders, and notice thereof.] The trustees of any such corporation desiring to avail themselves of such provisions shall call a meeting of the stockholders for the purpose of determining what amount of the indebtedness of the corporation shall be paid by each stockholder; and they shall give thirty days' notice to the stockholders, in writing, or by publication in some newspaper of general circulation in the county where the corporation is located, of the time, place, and purpose of the meeting, at which the trustees shall submit a detailed statement showing the assets and indebtedness of the corporation. (58 v. 20, §§ 2, 3; S. & S., 108.)

Sec. 3755. [Meeting may fix amount of assessment.] A majority in interest of the stockholders present at such meeting may determine what amount of the indebtedness of the corporation shall be paid by each stockholder, and fix the time or times, and the mode, for the payment of the amount of money assessed against each stockholder; but these provisions shall not interfere with or abridge the right of any creditor of the corporation to institute any proceedings authorized by law to enforce the liability of stockholders. (58 v. 20, § 4; S. & S. 108.)

Sec. 3756. [How much may be assessed, and collection thereof.]

The assessments shall be pro rata upon the stock subscribed or otherwise acquired by each stockholder, and in no case shall exceed the amount for which each stockholder is or may be liable by law; and a stockholder who fails to pay, as required by the assessment, the amount so assessed against him, shall be liable in a civil action, to be brought in the name of the corporation, for the recovery thereof, as in other cases of indebtedness. (58 v. 20, §§ 5, 6; S. & S. 108, 109.)

Sec. 3757. [The board of military academies; how constituted, etc.] The academic board of an institution incorporated for military and polytechnical education shall consist of the superintendent of the institution, the commandant of cadets, and the professors, and may make and enforce rules and regulations for the government of cadets; but such rules and regulations must be first submitted to and approved by the governor of the state. (64 v. 239, §§ 1, 2; S. & S. 109.)

Sec. 3758. [Board of visitors; how constituted.] The board of visitors of such institution shall consist of the governor who shall be ex officio a member and the president of the board, of two other persons to be named by the governor, and such other persons as the superintendent of the institution may appoint. (64 v. 239, § 3; S. & S. 110.)

Sec. 3759. [Duties of board of visitors.] The board of visitors shall meet annually at the institution, on the first day of the annual commencement exercises, and examine into the condition of the classes, quarters, and commons, and the discipline, drill, records of standing in study, and conduct of the cadets, and shall report on same to the legislature at its next annual session; but the board of visitors, or any member thereof, may visit and inspect the institution at any time. (64 v. 239, § 4; S. & S. 110.)

Sec. 3760. [How the term of office of trustees and visitors may be fixed.] At a regular meeting for the election of directors or trustees of any college or other institution of learning, the authorized voters may determine, by vote, whether the election of directors or trustees shall be held annually, if the term of their election is for a longer period than one year, and also what proportion of the entire board shall be elected annually; at the first election held under the provisions of this section the voters shall designate upon their ballots who shall serve for one year, who for two years, and who for three years; and vacancies caused by expiration of term of office shall be filled by election annually thereafter. (70 v. 125, § 1.)

Sec. 3761. [Certain corporations may change location.] The trustees of colleges and other institutions of learning not endowed by voluntary contributions, which have been established under special acts of incorporation, and which by the provisions of such acts are located at particular places, may change the location thereof to such

other places as they may deem proper, and erect and maintain academies and other schools auxiliary thereto. (70 v. 248, § 1.)

Sec. 3762. [Sale and distribution of the property of certain corporations.] The trustees of any university, college, or other institution of learning, incorporated by the authority of this state under special charter, owned in shares or stock subscribed or taken, may dispose of its property at public sale, upon such terms as to payment as the stockholders thereof, by a vote of three-fourths of the shares or stock of the institution, may direct, after giving public notice of the same, by publication, for six consecutive weeks in some newspaper published in the county where the institution is located, if one is published therein, and if not, then in some newspaper published in this state, and of general circulation in such county, which notice shall contain a full statement of the terms, time, and place of sale, and the action of the trustees as aforesaid; and the trustees may close up the corporate existence of such institution, and make an equitable division and distribution of the proceeds of the sale among all the holders of shares or stock, after the payment of the just debts of the corporation. (67 v. 24, § 1.)

Sec. 3762a. [Certain colleges, whose articles of incorporation are not on file in the office of the secretary of state, may file same there and amend.] The trustees of any university, college or institution of learning, incorporated by the authority of this state, or under the general corporation laws thereof, owned in shares of stock subscribed and paid up in full, by a majority of the owners of such stock, for the sole purpose of promoting education, religion and morality, or the fine arts, exclusively among males or females, may, on the written petition of the owners of a majority of such stock filed before them, or on the vote of the owners of the majority of such shares of paid up stock at any general meeting of the stockholders called for such purpose, after thirty days' notice published in some newspaper published and of general circulation in the county, by the board of trustees, may change the name and enlarge the purposes and objects of any such university, college or institution, by amendments to its charter, approved by the owners of the majority of such stock for the change of the name and the enlargement of the purpose and object of such university, college or institution of learning, so that all the educational rights and privileges thereof may be bestowed in the co-equal and co-ordinate education of both sexes. When such amendment is adopted and the original articles of incorporation of said corporation have not been filed and recorded in the office of the secretary of state, a copy of such amendment and copy of the original articles of incorporation of said corporation, with a certificate to each of them thereto affixed, signed by the president and secretary of said corporation, and sealed with the corporate seal, if any there be, stating the fact and

date of the adoption of such amendment, and that such copy of said amendment, and that such copy of said original articles of incorporation of said corporation are and is a true copy of the originals, shall be recorded in the office of the secretary of state, and when so recorded, and not until then, said amendment shall become and be in law the sole articles of incorporation of said corporation; and all the property, real and personal, and the title thereunto, and all the rights and credits, shares of stock, and rights of stockholders, corporate franchises, and all endowment fund or funds, or gift or bequest, or legacies or mortgage securities and promissory notes, and rights of every kind belonging to, vested in or claimed, or possessed by the said original corporation, shall by said amendment pass to, be assigned and transferred and vested in and held, enjoyed and exercised by the said corporation named, created and organized by said amendment for the promotion of all the objects and purposes of its creation and organization. For recording such amendments and copies of such original articles of incorporation, and for furnishing a certified copy or copies thereof, the secretary of state shall receive a fee of twenty cents per hundred words, to be in no case less than five dollars. (1888, April 14: 85 v. 270.)

Sec. 3762b. [Colleges may change name and purpose, when; procedure; fees.] That the board of trustees of any university, college or institution of learning, incorporated by the authority of this state, or under the general corporation laws thereof, for the sole purposes of promoting education, religion and morality, or the fine arts, may, at any regular or special meeting of such board of trustees, called for such purpose, after thirty days' actual notice to each and all of such trustees, change the name and enlarge the purposes and objects of any such university, college or institution of learning, by amendment to its charter, approved by a majority of such board of trustees at such regular or special meeting, so called and so notified, for the change of such name and the enlargement of the purposes and objects of such university, college or institution of learning. When such amendment is so adopted by the board of trustees of any university, college or institution of learning, already incorporated by the authority of this state, or under the general corporation laws thereof, a copy thereof, with a certificate thereto affixed, signed by the president and secretary of such board of trustees, and sealed with the corporate seal, if any there be, stating the fact and date of such amendment, and that such copy is a true copy of the original amendment, shall be filed and recorded in the office of the secretary of state, and when so filed and recorded, and not until then, said amendment shall become and be in law an integral part of the articles of incorporation of said corporation, and all the property, real and personal, the title thereto, and all the rights and credits, corporate powers and franchises,

and all endowment fund or funds, gifts and bequests, legacies, mortgage securities and promissory notes, and all powers, rights and privileges of every kind belonging to, vested in, claimed or possessed by said original corporation shall, by said amendment, pass to, be assigned, transferred and vested in, and held, enjoyed and exercised by the said corporation, named, created and organized by said amendment for the promotion of all [the] objects of its creation and organization. And said new corporation shall be liable for and perform all the lawful obligations, contracts and undertakings of said original corporation. For recording such amendment and furnishing a certified copy or copies thereof, the secretary of state shall receive a fee of twenty cents per hundred words, to be in no case less than five dollars. (87 v. 8.)

Sec. 3763. [Restrictions under which medical colleges and teachers may receive bodies for dissection.] All superintendents of city hospitals, directors or superintendents of city or county infirmaries, directors or superintendents of work-houses, directors or superintendents of asylums for the insane, or other charitable institutions founded and supported in whole or in part at public expense, the directors or warden of the penitentiary, township trustees, sheriffs, or coroners, in possession of bodies not claimed or identified, or which must be buried at the expense of the county or township, shall, before burial, hold such bodies not less than thirty-six hours and shall notify the professor of anatomy in any college which by its charter is empowered to teach anatomy, or the president of any county medical society of the fact that such bodies are being so held and shall, before or after burial, by such said superintendent, director, or other officer, on the written application of the professor of anatomy, the president of any county medical society, deliver to such said professor, or president, for the purpose of medical or surgical study or dissection, the body of any person who has died in either of said institutions from any disease, not infectious, if such body has not been requested for interment by any person at his own expense;

[Body to be delivered to claimant.] If the body of any deceased person so delivered, be subsequently claimed, in writing, by any relative or other person for private interment, at his own expense, it shall be given up to such claimant;

[Interment of body after examination or dissection.] After such bodies shall have been subjected to such medical or surgical examination or dissection, the remains thereof shall be interred in some suitable place at the expense of the party or parties in whose keeping said corpse has been placed.

[Notification to relatives of deceased person.] In all cases it shall be the duty of the officer having such body under his control

to notify or cause to be notified, in writing, the relatives or friends of such deceased person ;

[**Penalty for refusal to deliver body, or acceptance of consideration for same.**] And any superintendent, coroner, or infirmary director, sheriff, or township trustee, failing or refusing to deliver such bodies when applied for, as herein provided, or who shall charge, receive, or accept money, or other valuable consideration for the same, shall be fined in any sum not exceeding one hundred dollars, and not less than twenty-five dollars, or be imprisoned in the county jail not exceeding six months ; provided, however, that in no case shall the body of any such deceased person be delivered until twenty-four hours after death.

[**Body of stranger or traveler.**] The bodies of strangers or travelers, who die in any of the institutions herein named, shall not be delivered for the purpose of dissection, except said stranger or traveler belong to that class commonly known as tramps ; and all bodies delivered as herein provided shall be used for medical, surgical and anatomical study only, and within this state,

[**Unlawful to have unauthorized body in possession ; penalty.**] And the possession of the body of any deceased person for the above purposes, and not authorized under this section, shall be unlawful, and the detention of the body of any deceased person, claimed by relatives or friends for the interment at their expense, shall also be unlawful, and the person so detaining said body unlawfully, shall be fined in any sum not exceeding one hundred dollars, nor less than twenty-five dollars, or be imprisoned in the county jail not exceeding six months. (93 v. 84 ; 78 v. 33 ; Rev. Stat. 1880 : 67 v. 25, § 1.)

Sec. 3764. [**Penalty for having unlawful possession of corpse.**]

Any person, association, or company, having unlawful possession of the body of any deceased person shall be jointly and severally liable with any and all other persons, associations, and companies that had or have had unlawful possession of such corpse in any sum not less than five hundred dollars and not more than five thousand dollars, to be recovered at the suit of the personal representative of the deceased in any court of competent jurisdiction, for the benefit of the next of kin of deceased.

Secs. 3765-3766. (Repealed 1880, March 26 ; 77 v. 85.)

Sec. 3767. [**Organic rules which may be prescribed in certain articles of incorporation.**] An association incorporated for the purpose of receiving gifts, devises or trust funds to erect, establish, or maintain an academy in any department of fine arts or a gallery for the exhibition of paintings or sculpture or works of art, or a museum of natural or other curiosities, or specimens of art or nature promotive of knowledge, or a law or other library, or courses of lectures upon science, art, philosophy, natural history, or law, and

to open the same to the public on reasonable terms, or an industrial training school, or a mechanics' institute for advancing the best interest(s) of mechanics, manufacturers and artisans, by the more general diffusion of useful knowledge in those classes of the community, or homes for indigent and aged widows and unmarried women and whose directors or trustees may be of either sex, may in its articles of incorporation prescribe the tenure of office of the trustees or directors, the mode of appointing or electing successors, the administration and management of the property, and trust and other funds of the corporation, and such other organic rules as may be deemed expedient or acceptable to donors which shall be and remain the permanent organic law of the corporation. (1887, February 21; 84 v. 31; 83 v. 40; Rev. Stat. 1880; 75 v. 135, §§ 1, 3.)

Sec. 3768. [May add to the objects of the corporation; acceptance of statutory provisions.] Such corporations may by certificate, duly acknowledged by the trustees or directors, and filed in the office of the secretary of state, add to the original objects and purposes of the corporation any of the several objects and purposes, mentioned in the preceding section which were not provided for by the articles of incorporation, and in any such corporation heretofore incorporated under the laws of the state may by certificate, reciting the organic rules adopted by such corporation as its permanent organic law, and duly acknowledged by the trustees or directors, and lodged in the office of the secretary of state, except the provisions of the preceding section. (1886, March 26; 83 v. 41; 75 v. 135, § 3.)

(3768-1) Sec. 1. [Authorizing certain mechanics' institutes to borrow money; liability of directors and trustees.] Any mechanics' institute, incorporated under the laws of this state prior to the year eighteen hundred and fifty-one, be and it is hereby authorized and empowered to borrow money, issue bonds or notes therefor, at no more than the legal rate of interest, and secure the same by mortgage upon its real estate. (82 v. 118.)

(3768-2) Sec. 2. [Directors not personally liable.] The directors and trustees of such corporation shall not be personally liable for debts contracted by virtue of this act. (82 v. 118.)

Sec. 3769. [Accounts of receipts and disbursements.] The officers of the corporation charged or intrusted with the receipts and disbursements of its funds or property shall make and keep like accurate and detailed accounts of such funds, and the receipts and disbursements thereof, as are required to be kept by the fund commissioners of the state; the trustees shall, on or before the third Monday in January of each year, file with the clerk of the court of common pleas of the county in which the corporation is located an abstract of their account, which abstract shall correspond in date, amount,

person to whom paid, and from whom received, and on what account, with the voucher taken or given on account of such receipts and disbursements; they shall at the same time, annually, file in such clerk's office a report of the names of the donors, the kind, amount, or value of gifts of each, and a brief statement of the conditions and purposes of the gifts; and the filing of such abstract and report, and the supplying of any omission in either, may be enforced by order and attachment of the court of common pleas of the proper county, against the trustees, on motion of any respectable citizen. (75 v. 135, § 4.)

Sec. 3770. [Trustees ineligible to other office.] No trustee shall be eligible to any office or agency of the corporation to which any salary or emolument is attached, nor shall the trustees be allowed any salary, emoluments, perquisites, except the right of free ingress to the grounds, rooms, and buildings of the corporation. (75 v. 135, § 5.)

Sec. 3771. [Attorney general may, by action, enforce duties of officers.] On application to the attorney general of five citizens of the proper county, in writing, verified by the oath or affirmation of one of them, setting forth specific charges against any of the fiscal or other agents or trustees of such corporation, involving a breach of trust or duty, he shall give notice thereof to the trustees or agents complained of, and inquire into the truth of such charges, and for this purpose he may receive affidavits, or enforce, by process from the court of common pleas of Franklin county, the production of papers and the attendance of witnesses before him; and if, on testimony or other evidence, he believes the charges, or any of them, to be true, he shall proceed, by action in that court, in the name of the state, against the delinquent trustee or trustees, fiscal agent or agents, and, on the hearing, the court may direct the performance of any duty, or the removal of all or any of the agents or trustees and decree such other and further relief as may be equitable. (75 v. 135, § 6.)

Sec. 3771a. [How number of trustees of certain colleges increased.] The board of trustees of any university or college heretofore incorporated, but not under the patronage of conferences or other ecclesiastical bodies of any religious denomination, as described in section 3736, may increase the number of such trustees to twenty-four, exclusive of the president, or a less number, and may divide said trustees into six classes, each class to serve six years, and one class to be chosen each year, for said term; but one trustee of each class may be chosen by the votes of the alumni of such university or college, if the board of trustees shall so provide by by-law, in which case it shall also be the duty of the board of trustees to provide, by such by-laws, a method of nominating and electing such

appointee of the alumni. The president of such university or college shall, ex officio, be a trustee perpetually, and shall not be included in the classes going out in rotation. If it shall be necessary, in the first enlargement of the board of trustees, under this section, to distribute new members to the several classes, whose terms shall expire by rotation, the distribution may be made in such manner as the board may direct, so that no trustee shall be elected for a longer term than six years. (87 v. 188; 86 v. 341.)

APPENDIX.

FORMS AND INSTRUCTIONS.

NOTE. — Where forms are given for one class of districts they can generally be made applicable to other districts by making slight changes in phraseology.

ELECTIONS.

I. NOTICE OF ELECTION IN SUBDISTRICTS.

Notice is hereby given to the qualified voters of subdistrict No. —, of — township, — county, Ohio, that the next annual school meeting for the election of a school director [subdirector] in said district will be held at the — school house [or usual place] in said subdistrict on Monday, the — day of April, 19—, beginning at — o'clock P. M. [A. M.], and closing at — o'clock P. M. [A. M.]

—, *Director.*

NOTE. — The above notice to be posted in three or more conspicuous places, at least six days prior to the election. Sections 3916 and 3917.

For filling vacancies see section 3981. When the person to be elected is to fill an unexpired term, the notice should so state.

In case of a tie vote or failure to elect see section 3978.

II. NOTICE OF ELECTION IN A NEW SUBDISTRICT.

WHEREAS, The board of education of — township, — county, did, at their last regular meeting, the third Monday of —, abolish subdistrict number —, [or subdistricts numbers — and —] and form from the territory of said subdistrict, and so much of subdistrict number — as is bounded as follows: [*describe boundary*], a new subdistrict, to be known as subdistrict number —:

Therefore, notice is hereby given to the qualified voters of said subdistrict thus organized and designated, that a meeting for the election of a director will be held at —, on the — day of —, from — o'clock — to — o'clock —, said election to be conducted as prescribed in section 3922.

By order of the Township Board.

—, *Clerk.*

—, 19—.

III. POLL BOOK

Of the election held in subdistrict No. —, in the township of —, in the county of —, and state of Ohio, on Monday, the — day of April, in the year A. D. 19—.

A. B., Chairman, and C. D., Clerk, judges of said election, were severally

Forms and Instructions.

sworn, as the law directs, previous to their entering on the duties of their respective offices.

Number and names of electors..		Number and names of electors.	
No. 1	.....	No. 5	.....
2	.....	6	.....
3	.....	7	.....
4	.....	8	.....

It is hereby certified that the number of electors who voted at this election is _____.

_____, *Chairman.*
 _____, *Secretary.*
 _____, *Judges.*

IV. TALLY SHEET

Of the election held in subdistrict No. —, in the township of —, in the county of —, and state of Ohio, on Monday, the — day of April, in the year A. D. 19—, to elect a director [subdirector] for said subdistrict.

Names of candidates.	Tallies, showing number of votes given for each candidate.					Total.
	5	10	15	20	25	
.....						
.....						
.....						
.....						
.....						
.....						
.....						
.....						

We hereby certify

That _____ received _____ votes for director [subdirector].

That _____ received _____ votes for director [subdirector].

That _____ received _____ votes for director [subdirector].

That _____ received _____ votes for director [subdirector].

That _____ received _____ votes for director [subdirector].

And that _____ was duly elected director [subdirector] for a term of _____ years.

_____, *Chairman.*
 _____, *Secretary.*
 _____, *Judges.*

Forms and Instructions.

The poll book and tally sheet must be signed by the judges of election before they separate. No signing after such separation is valid. They must be delivered within five days to the clerk of the township, see section 3917.

Where two or more officers are to be elected the judges should caution the voters to be careful to designate the office for which they are voting.

V. MINUTES OF SUBDISTRICT SCHOOL MEETING.

SUBDISTRICT No. —, ——— TOWNSHIP, ——— COUNTY, OHIO.
—————, 19—.

At a meeting of the qualified voters of said subdistrict, held on the second Monday of April, 19—, ——— was appointed chairman and ——— secretary.

Whereupon said voters proceeded to elect by ballot, one director [subdirector] of said subdistrict for the term of three years, or one director [subdirector] for — years, to fill the unexpired term of ———: and upon inspection of the several ballots given at said election, it was found and publicly declared, that ——— was duly elected for the full term, or ——— for the unexpired term.

—————, *Chairman.*
—————, *Secretary.*

VI. NOTICE OF MEETING TO VOTE A TAX FOR BUILDING PURPOSES.

Notice is hereby given by the board of education of ——— township, ——— county, Ohio, that there will be a special meeting of the qualified voters of said township at ———, on the ——— day of ———, at ——— o'clock ———, to consider the question whether a tax of ——— hundred dollars shall be levied upon the taxable property of said township to purchase a school house site and to build and furnish a school house [*or for either of these purposes as the case may be*], in subdistrict ——— of said township, the erection of the school house being, in the opinion of the board, necessary, and the rate of tax which the law authorizes the board to levy being insufficient for the purpose; and the further questions whether the levy shall be made from year to year thereafter, and what amount shall be levied each year until the actual cost of such site and building is raised.

By order of said board of education.

—————, *Clerk.*

—————, 19—.

NOTE. — The ballot used at such an election may be something like the following:

FOR TAX LEVY FOR SCHOOL SITE AND BUILDING.

For levying a tax to purchase site and erect thereon a school building, at a cost not to exceed \$——. No. [Yes.]

For levying this tax from year to year according to law, the levy in any one year not to exceed \$——, until the sum of \$—— and accrued interest is raised and paid. No. [Yes.]

The above form may by slight alterations be adapted to cases in which other than township districts are interested.

In districts where school elections are held on the first Monday of April, all elections on school questions should be held under the supervision of regular election officers and the ballots be made to conform to the provisions of the Australian ballot law.

Forms and Instructions.

VII. APPOINTMENT OF SCHOOL DIRECTOR TO FILL VACANCY.

This is to certify that _____ has been appointed director [sub-director] of subdistrict number _____, _____ township, _____ county, Ohio, to fill the vacancy caused by _____ of _____, said appointment to extend until the next annual election as provided for in section 3981.

_____, *President.*

_____, *Clerk.*

SUBDISTRICTS.

See form No. XIV for oath of subdirector.

VIII. DIFFERENT MODES OF ALTERING SUBDISTRICTS.

Resolved by the board of education of _____ township, That there be transferred and united with subdistrict number _____, so much of subdistrict number _____, as is bounded as follows: [*describe boundary.*]

Resolved by the board of education of _____ township, That subdistrict number _____ is hereby abolished, and there is hereby transferred to and united with subdistrict number _____, so much of the territory of said abolished subdistrict as is bounded as follows: [*describe boundary*], and so much of said abolished subdistrict as is not herein united with subdistrict number _____, is transferred to and united with subdistrict number _____. This resolution shall take effect on the _____ day of _____, 19—.

Resolved by the board of education of _____ township, That so much of subdistrict number _____, as is bounded as follows: [*describe boundary*], be cut off from said subdistrict, and that so much of subdistrict number _____ as is bounded as follows: [*describe boundary*], be cut off from said subdistrict, and that the territory thus cut off from subdistricts numbers _____ and _____, respectively, is hereby consolidated and formed into a new subdistrict and designated subdistrict number _____ of _____ township.

Resolved by the board of education of _____ township, That subdistricts numbers _____ and _____ are hereby abolished, and that the territory included in said subdistricts at the time of their abolishment is hereby consolidated and formed into a new subdistrict, and designated subdistrict number _____ of _____ township. This resolution shall take effect on the _____ day of _____, 19—.

NOTE. — When a new subdistrict is formed the township board should call a meeting of the qualified voters to elect a director. [Section 3922.]

JOINT SUBDISTRICTS.

IX. PETITION FOR JOINT SUBDISTRICT.

[To be placed on file by the clerk of the board.]

To the Board of Education of _____ Township: _____, _____ 19—.

GENTLEMEN: We, the undersigned electors, residing in the territory herein-after described, do hereby most respectfully pray to your honorable body to establish a joint subdistrict [*special district, additional subdistrict*] embracing the territory bounded as follows: [*describe the boundaries and set forth reasons causing this petition.*]

And thus the undersigned shall ever pray, etc.

[Sections 3931, 3932 and 3946.]

Forms and Instructions.

X. NOTICE TO MEMBERS OF BOARD.

DEAR SIR: You are hereby notified that a petition has been presented and filed, praying for the creation of a joint subdistrict [*special district, additional subdistrict*] to comprise the territory bounded as follows: [*describe the boundaries.*]

The boards will meet at _____, on the _____ day of _____, 19—, at _____ o'clock _____ for the purpose of considering the prayer of the petitioners. The presence of every member is desired. [Section 3933.]

_____, Clerk.

A notice, like the above, with a slight change required, must be sent "to the clerks of all other boards of education having jurisdiction over any of the territory sought to be affected; and such clerks, upon the receipt of such notice, shall in like manner give notice forthwith of the filing of such petition, and of the time and place of meeting to each member of their respective boards." [Section 3933.]

XI. ORGANIZATION OF JOINT SUBDISTRICTS.

(Memorandum of joint meeting.)

At a joint meeting of the boards of education of _____ township, _____ county, Ohio, and _____ township, _____ county, Ohio, held at _____, Ohio, on the _____ day of _____, 19—, _____ was elected chairman and _____ secretary.

Present _____, _____, _____, members of _____ township board of education, and _____, _____, _____, members of _____ township board of education, said members constituting a quorum of each board. [Give proceedings in detail.]

_____, Chairman.

Attest:

_____, Secretary.

It requires a majority of the members present from each board to carry any proposition presented.

A copy of the proceedings must be transmitted to the clerk of each board and one filed with the auditor of each county having territory in the proposed district, see section 3928.

XII. PETITION TO PROBATE JUDGE.

_____, _____, 19—.

Hon. _____, Probate Judge of _____ County, State of Ohio:

WHEREAS, The boards of education of _____ township, _____ county, Ohio, and of _____ township, in said county and state, having refused, at a meeting held [*state time and place*] to grant our petition [or having failed to meet within the time prescribed by law to consider our petition] praying for the creation of a joint subdistrict [*special district, etc.*], said petition having been filed with the clerk of said _____ township board of education, as prescribed by law, on the _____ day of _____, 19—:

Therefore, we, the undersigned petitioners and electors, residents in the territory hereinafter described, do hereby most respectfully pray and petition you to appoint three judicious, disinterested men of _____ county, and not residents of the township [or townships or districts] to be affected by this petition,

Forms and Instructions.

to consider the creation of a joint subdistrict embracing the territory bounded as follows: [*describe the boundaries.*]

And thus we shall ever pray, etc.

[Sections 3934 and 3938.]

The above form may readily be adapted to cases as they may arise.

XIII. REMONSTRANCE AGAINST JOINT SUBDISTRICT.

_____, _____, 19—

Hon. _____, Probate Judge of _____ County, State of Ohio:

WHEREAS, The boards of education of _____ township, _____ county, Ohio, and of _____ township of said county and state, at a joint meeting held on _____ day of _____, 19—, did establish a joint subdistrict composed of territory lying within the limits of said township and bounded as follows: [*describe boundary.*]

Therefore, we, the undersigned petitioners and electors, residents of the territory thus described, do hereby remonstrate against the action of such boards, and do most respectfully pray and petition you to appoint three disinterested, judicious men of _____ county, not residents of the township to be affected by this petition, to consider whether the action of said boards should not be set aside for the following reasons, to-wit: [*give reasons.*]

In case the townships lie in different counties or a village or special district is affected, the above form may be changed to suit the circumstances.

TOWNSHIP BOARDS OF EDUCATION.

The oath of office of members and officers of boards of education can be administered by the clerk or any member of the board.

XIV. OATH OF SCHOOL DIRECTOR.

The following oath which may be administered by the clerk or any other member of the board of education, should be taken by each director before entering upon the discharge of his duties. See section 3979.

You, _____, do solmenly swear [*or affirm*] that you will support the constitution of the United States, and the constitution of the State of Ohio, and that you will faithfully and impartially discharge the duties of director, in and for said subdistrict, number _____, _____ township, _____ county, Ohio, according to law and the best of your ability.

A similar oath should be taken by subdirectors.

XV. NOTICE OF SPECIAL MEETING OF TOWNSHIP BOARD.

Notice is hereby given that there will be a meeting of the board of education of _____ township, _____ county, Ohio, on the _____ day of _____, at _____ o'clock _____, at _____, to consider the question _____, and other business which may be considered necessary to transact.

_____, _____, 19—. _____, Clerk.

Forms and Instructions.

NOTE.—The purpose for which a meeting is called should be stated in the notice

XVI. TEACHER'S CONTRACT.

An aggrement entered into between _____, of _____, _____ county, Ohio, and the board of education of _____ township school district in _____ county, Ohio; the said _____ hereby agrees to teach the public school in subdistrict No. _____ in said township and county for a term of _____ months, and also agrees to abide by and maintain the rules and regulations adopted by said board for the government of said schools of said township district. And in consideration of such services, the said board of education agrees to pay the said _____ the sum of _____ dollars, payable monthly at the office of the treasurer of the board of education.

Entered into this _____ day of _____, 19—.

_____, Teacher.
_____, President.
_____, Clerk.

Any special provisions may easily be inserted.

XVII. CERTIFICATE FOR TEACEHR'S PAY.

To the Clerk of _____ Township, _____ County, Ohio:

This is to certify, that _____, under a contract duly made and entered into, taught a common school in subdistrict number _____, of said township, from the _____ day of _____, 19—, to the _____ day of _____, 19—, in all _____ weeks, at _____ per month: and that there is due him for said services the sum of \$_____.

By authority of the Board of Education _____

_____, President.

XVIII. ORDER FOR TEACHER'S PAY.

No. _____.

_____, Ohio, _____, 19—.

To Treasurer of _____ Township, _____ County, Ohio:

Pay to _____ the sum of _____ (\$_____) dollars for services as teacher in subdistrict No. _____ of said township, from _____, 19—, to _____, 19—, in all _____ weeks, at _____ per _____.

_____, Township Clerk.

\$_____, _____, Ohio, _____, 19—.

Received on the above order _____ dollars.

_____, Teacher.

School orders are not negotiable, see 22 O. S., 144.

XIX. DISMISSAL OF TEACHER.

WHEREAS, It has been represented to us, and on due investigation we have found, according to our best judgment and belief, that _____, who has been employed and is now engaged in teaching a school in subdistrict number _____, _____ township, _____ county, Ohio, is negligent [or here insert any other sufficient cause] as such teacher:

Therefore, _____ is hereby dismissed as teacher of said school.

Forms and Instructions.

Done at a legally convened meeting of said board this — day of —, 19—, _____, *President*.

Attest:

_____, *Clerk*.

See section 4017.

Or: Whereas, we have been required by the board of examiners of — county, to dismiss _____, now engaged as a teacher in subdistrict number —, — township, and county aforesaid, the said board of examiners having revoked his certificate for cause:

Therefore, said _____ is hereby dismissed as teacher as aforesaid.

Done at a legally convened meeting of said board of education this — day of —, 19—.

Attest:

_____, *Clerk*.

XX. ORDER ON THE TREASURER OTHER THAN FOR TEACHER'S PAY.

No. —.

_____, Ohio, —, 19—.

To Treasurer of — Township, — County, Ohio:

Pay to _____ the sum of _____ (\$—) Dollars, for _____ from the — school fund.

By order of the board of education.

_____, *Township Clerk*.
_____, *President*.

\$—.

_____, Ohio, —, 19—.

Received on the above order the sum of _____ dollars.

See section 4047.

School orders are not negotiable, 22 O. S., 144.

XXI. CERTIFICATE OF ANNUAL ESTIMATE.

To the Auditor of — County:

It is hereby certified by the board of education of — township, — county, that the entire amount of money necessary to be assessed on the taxable property of said township for all school purposes, during the next school year, as directed by section 3958, R. S., is — dollars, as follows:

For building purposes and repairs.....	\$—
For payment of teachers after state fund is exhausted.....	—
For other school expenses.....	—
Total	\$—

By order of the board of education.

Attest:

_____, *Clerk*.

_____, Ohio, —, 19—.

_____, *President*.

Forms and Instructions.

XXII. CERTIFICATE OF ANNUAL ESTIMATES FOR JOINT SUBDISTRICTS.

To the Auditor of ——— County:

It is hereby certified by the board of education of ——— township, ——— county, Ohio, having charge of the school in joint subdistrict number ———, composed of parts of ——— and ——— townships, that the amount of money necessary to be assessed on the taxable property of said townships, to pay the expenses of said joint school during the next school year, as directed by section 3961 of the Revised Statutes of Ohio, is ——— dollars, as follows:

——— TOWNSHIP.

For building purposes and repairs..... \$———
 For payment of teachers after state fund is exhausted..... ———
 For other school expenses..... ———
 Total \$———

——— TOWNSHIP.

For building purposes and repairs..... \$———
 For payment of teachers after state fund is exhausted..... ———
 For other school expenses..... ———
 Total \$———

The number of youth enumerated in May last, in the respective parts of the townships included in said joint subdistrict, was as follows: ——— township, ———; ——— township, ———; total, ———.

By order of the board of education of ——— township.

_____, *President.*

Attest:

_____, *Clerk.*

_____, _____, 19—.

NOTE. — In case the townships having territory in a joint subdistrict are situated in different counties, a copy of the above certificate of estimates should be sent to the auditor of each county.

XXIII. CERTIFICATE OF SCHOOL FUNDS IN TREASURY.

We hereby certify that, by a count, as required by law, of all the money, bonds and securities in the hands of _____, treasurer of _____ township [or _____ district], _____ county, Ohio, made this _____ day of _____, 19—, in the presence of the clerk of the board, we find _____ dollars [and bonds, etc., in value amounting to _____ dollars] of school funds to be in the treasury on the date above named, and we have directed the clerk to enter upon the records of the board a copy of this report.

_____,
 _____,
 _____,

Board (or committee.)

Attest:

_____, *President.*
 _____, *Clerk.*

[See section 4043, Revised Statutes.]

Forms and Instructions.

XXIV. TRANSFER OF TERRITORY.

(Minutes of boards.)

Resolved, That the following described territory be and the same is hereby transferred from — school district, — county, Ohio, to — school district, — county, Ohio, subject to the provisions of section 3893, Revised Statutes of Ohio [*give description*.]

Resolved, That the clerk be instructed to notify the board of education of — school district of — county, Ohio, of the passage of this resolution, and upon similar action being taken by said board that said clerk file a certified copy hereof with the county auditor, together with a correct map of the territory described.

XXV. LEASE TO SCHOOL DISTRICT.

Know all men by these presents:

That —, of the county of —, and State of —, for the consideration herein mentioned, does hereby lease unto the board of education of the township of —, county and state aforesaid, its successors and assigns, the following premises, to-wit: [*Here insert description*], with all the privileges and appurtenances thereunto belonging; to have and to hold the same for and during the term of — years from the — day of —, 19—. And the said board of education for itself and assigns, does covenant and agree to pay the said — for the said premises, the annual rent of — dollars. [*Insert date and place of payment*.]

In witness whereof, the said parties hereunto set their hands, this — day of —, 19—.

_____, *Lessor.*

_____,
President of the Board.

_____, *Clerk.*

Signed, sealed, and acknowledged in the presence of —

_____,

State of Ohio, — County, ss.:

Before me, a — in and for said county, personally appeared —, grantor in the above instrument, and acknowledged the same to be — voluntary act and deed, for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto subscribed my name and affixed my — seal, this — day of —, A. D. 19—.

If the lease be for three years or more, it must be acknowledged, attested by two witnesses, and recorded. If for a less term, it need not be executed with these formalities. See section 4112. The consideration may be money or anything else, and the form varied accordingly. The above form is for a long lease.

XXVI. OATH OF CLERK OF TOWNSHIP BOARD.

The State of Ohio, — County, — Township, ss.:

Before me, —, clerk of said township, personally came —, who, being duly sworn according to law, says that he will support the constitu-

Forms and Instructions.

tion of the United States and the constitution of the state of Ohio; and that he will faithfully discharge his duties as clerk of the board of education of the township district of _____ township, _____ county, Ohio, during his term of office, and until his successor is chosen and qualified.

Sworn to before me and signed in my presence, on the _____ day of _____, A. D. 19—.

XXVII. TOWNSHIP CLERK'S BOND.

Know all men by these presents:

That we, _____, _____, are held and firmly bound unto the state of Ohio, in the sum of _____ dollars, for the payment whereof we jointly and severally bind ourselves.

Signed and sealed by us this _____ day of _____, A. D. nineteen hundred and _____.

The condition of the above obligation is such that, whereas, the said _____ has been duly elected and qualified as clerk of _____ township, _____ county, and state of Ohio, for the term of two _____ from the _____ day of April, A. D. 19—, and until his successor is chosen and qualified.

Now, if the said _____ shall perform faithfully all the official duties required of him as clerk of said board, then this obligation will be void; otherwise it will remain in full force.

The sureties on the above bond, and its amount, approved by said board this _____ day of _____, A. D. 19—.



_____,
_____,
_____,
President of said Board.

_____,
Clerk of said Board.

XXVIII. OATH OF CLERK OF BOARD OF EDUCATION.

(Other than township.)

The State of Ohio, _____ County, _____ Township, ss.:

Before me, _____, personally came _____, who, being duly sworn according to law, says that he will support the constitution of the United States and the constitution of the state of Ohio; and that he will faithfully discharge his duties as clerk of the board of education of the _____ district of _____ in _____ township, _____ county, Ohio, during his term of office, and until his successor is chosen and qualified.

_____,
_____,
of said Board.

Sworn to before me and signed in my presence, on _____ day of _____, A. D. 19—.

Forms and Instructions.

XXIX. CLERK'S BOND.

Know all men by these presents, That we, _____, _____, are held and firmly bound unto the state of Ohio, in the sum of _____ dollars, for the payment whereof we jointly and severally bind ourselves.

Signed and sealed by us this _____ day of _____, A. D. nineteen hundred and _____.

Whereas, the said _____ has been duly chosen and qualified as clerk of the board of education of _____ district _____, in _____ township, _____ county, and state of Ohio, for the term of one year from the _____ day of April, A. D. 19—, and until his successor is chosen and qualified.

Now, the condition of the above obligation is such, that if the said _____ shall faithfully perform all the official duties required of him as clerk of said board, then this obligation will be void; otherwise it shall be and remain in full force.

_____,
_____,
_____.

The sureties on the above bond, and its amount, approved by said board this _____ day of _____, A. D. 19—.

_____,
President of said Board.

_____,
Clerk of said Board.

XXX. FINAL RECEIPT OF TOWNSHIP CLERK.

\$_____.

_____, Ohio, _____, 19—.

Received of _____, late clerk of _____ township, the sum of _____ dollars, the record book, account book, school laws, teachers' certificates and reports, and the other official books and papers in his hands.

_____, *Clerk.*

See section 4054.

XXXI. OATH OF TOWNSHIP TREASURER.

The State of Ohio, _____ County, _____ Township, ss.:

Before me, _____, clerk of said township, personally came _____, who, being duly sworn according to law, says that he will support the constitution of the United States, and the constitution of the state of Ohio; and that he will faithfully discharge his duties as treasurer of the board of education of the township district of _____ township, _____ county, Ohio, during his continuance in said office, and until his successor is chosen and qualified.

Sworn to before me and signed in my presence, on _____ day of _____, A. D. 19—.

_____,
Township Clerk.

XXXII. TOWNSHIP TREASURER'S BOND.

Know all men by these presents: That we, _____, _____, _____, are held and firmly bound unto the state of Ohio, in the sum

Forms and Instructions.

of _____ dollars, for the payment whereof we jointly and severally bind ourselves.

Signed and sealed by us this _____ day of _____, A. D. nineteen hundred and _____.

Whereas, the said _____ has been duly elected and qualified as treasurer of _____ township, _____ county, and state of Ohio, for the term of _____ year— from the _____ day of April, A. D. 19—, and until his successor is elected and qualified.

Now, the condition of the above obligation is such, that if the said _____ shall faithfully disburse, according to law, all school funds which come into his hands, then this obligation shall be void; otherwise it shall be and remain in full force.

The above bond approved by said board this _____ day of _____, A. D. 19—.

President of said Board.

Clerk of said Board.

A certified copy of bond must be filed with county auditor, see section 4043.

XXXIII. OATH OF TREASURER OF BOARD OF EDUCATION.

(Other than township.)

The State of Ohio, _____ County, _____ Township, ss.:

Before me, _____, personally came _____, and was duly sworn, according to law, to support the constitution of the United States, and the constitution of the state of Ohio; and perform faithfully his duties as treasurer of the board of education of the _____ district of _____, in _____ township, _____ county, Ohio, during his continuance in said office, and until his successor is chosen and qualified.

Sworn to before me and signed in my presence, on this _____ day of _____, 19—, by the said _____.

_____ *of said Board.*

XXXIV. TREASURER'S BOND.

(Other than township.)

We hereby acknowledge ourselves as firmly held unto the state of Ohio in the sum of _____ dollars, for the payment whereof we jointly and severally bind ourselves, our heirs, executors and administrators.

Signed and sealed by us, this _____ day of _____ A. D. 19—.

The condition of the above obligation is this, that the said _____ has been duly chosen and qualified as treasurer of the board of education of _____ district of _____, in _____ township, _____ county, and state of Ohio, for the term of one year from the _____ day of April, A. D. 19—, and until his successor is chosen and qualified; now if the said _____ shall faithfully disburse, according to law, all school funds which come into his hands, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

Forms and Instructions.

The above bond approved by said board this — day of —, A. D. 19—.

_____,
President of said Board.

_____,
Clerk of said Board.

XXXV. FINAL RECEIPT OF TOWNSHIP TREASURER.

\$ _____.

_____, Ohio, _____, 19—.

Received of _____, late treasurer of _____ township, _____ county,,
the sum of _____ dollars, and the following securities, bonds, and other school
property, to-wit: _____

_____, *Treasurer.*

XXXVI. COMPLAINT IN REGARD TO SCHOOL FUNDS.

To the State Commissioner of Common Schools:

SIR: I respectfully submit the following state of facts as existing in _____
school district, _____ county, Ohio.

(Statement of complaint containing one of the causes mentioned in section.
364, R. S.)

In consideration of the above statement I respectfully request the appoint-
ment of some competent accountant to investigate the condition of the school
funds of said district.

_____, *Complainant.*

State of Ohio, _____ County, ss.:

I, _____, _____, and _____, do solemnly swear (affirm)
that the statements made in the foregoing complaint are true to the best of my
knowledge and belief.

_____,
_____,
_____.

Sworn to by _____, _____, and _____, and subscribed in
my presence this — day of —, 19—.

_____,
(Title)

I hereby certify that _____, _____, and _____, are free-
holders and taxpayers, residents of _____ school district.

_____,
County Auditor.

_____, Ohio, _____, 19—.

COMPULSORY EDUCATION LAW.

(Sections 4022-1—4022-14.)

XXXVII. NOTICE TO PARENT OR GUARDIAN.

State of Ohio, _____ County, ss.:

To _____

You are hereby notified that _____, a child between the ages of _____
and _____ years, under your charge, is not attending school, that such non-
attendance is in direct violation of the law and without legal excuse.

Forms and Instructions.

You are hereby required to cause said child to attend some recognized school within five days from the date of this notice, and you are warned that if the truancy of said child is persisted in the final consequence will be as provided by law, as indorsed hereon.

Witness my hand this — day of —, 19—.

Truant Officer.

— school district, — county, Ohio.

Print sections 4022-7 and 6986-7, R. S., on reverse side of form.

XXXVIII. NOTICE TO TRUANT.

State of Ohio, ——— County, ss.:

To _____, a child between the ages of — and — years.

You are hereby notified that you are and will be required to attend some recognized school within five days from the date of this notice, and you are hereby warned that if this notice is not complied with the final consequences will be as provided by law as indorsed hereon.

Witness my hand this — day of —, 19—.

Truant Officer.

— school district, — county, Ohio.

Print section 4022-8 in full on reverse side of form.

XXXIX. NOTICE TO EMPLOYERS OF YOUTH.

To _____ [here insert name of person, company or corporation]:

Your attention is respectfully called to sections 4022-2, 4022-3, 4022-5 and 4022-11, 6987-7, R. S., to compel the elementary education of children.

In compliance with the provisions of this act, you are requested to return to me on this blank the names, ages, and residences of all minors under fourteen years of age employed by you, also all minors between fourteen and sixteen years of age, and to state whether you have a certificate from the superintendent of schools, or clerk of the board of education that authorizes you to employ such minors.

Clerk of ——— Board of Education.

[illegible]

In cities this notice may be signed by the superintendent of schools.

Forms and Instructions.

XL. TEACHER'S REPORT.

(Section 4022-6.)

_____, Ohio, _____, 19—.

To the Clerk of the Board of Education of ———, ——— County, Ohio.

The following is a correct list of the scholars attending my school at the time of this report, being the last week in ———, 19—.

_____, *Teacher.*

[illegible]

TRAVELING LIBRARIES.

The attention of boards of education, superintendents and teachers, is called to the fact that the Board of Library Commissioners, having control of the state library, has made arrangements whereby any reading club, association of citizens, board of education, or public library can secure a collection of from twenty-five to thirty-five books from such library, by complying with the conditions indicated in the following instructions. It is hardly necessary to point out the benefits to be derived by taking advantage of this opportunity to secure standard works from a library comprising seventy-five thousand volumes.

APPLICATION.

State Board of Library Commissioners, Columbus, Ohio:

GENTLEMEN-- We, the undersigned citizens of Ohio, members of the.....
.....
hereby apply to the Board of Library Commissioners of Ohio for the loan of books from the Ohio State Library.

It is hereby expressly agreed by and between the parties hereto that the books sent in response to this application are loaned to said applicants; that said applicants are to pay all freight or express charges on said books, and return the same to the Ohio State Library in as good condition as when they are received, ordinary wear excepted.

..... is hereby appointed librarian, and is authorized to represent us in all arrangements with the Board of Library Commissioners, until we notify said Board of Commissioners that said librarian is no longer authorized to represent us.

.....
.....
.....
.....

INSTRUCTIONS.

In filling out the application, have at least two-thirds of the members sign the same. When ladies sign, have them prefix Miss or Mrs. to their names.

If the librarian is a married lady, give the husband's name as well as her own for convenience in corresponding.

In case of a club, give date of organization, number of members, and number of signers.

All the blanks must be carefully filled out.

Books may be kept three months, with privilege to extend the time. The right is reserved to call for a book any time after one month from date of issue.

Forms and Instructions.

The librarian and members will be held responsible for the safe return of the books. No resignation will release either until this condition is complied with.

EXPLANATIONS.

Objects: 1—To furnish good literature to the public. 2—To strengthen small libraries. 3—To create an interest in the establishment of new libraries.

A traveling library is a collection of from twenty-five to thirty-five books sent out by the State Library to a reading club, an association of citizens, a board of education or a public library, to be kept three months, with privilege of renewal.

On receipt of a request on the forms furnished by the State Library, properly filled by the members of the club, the officers of a free public library, board of education, or other association, the books will be shipped. The parties receiving the books must pay transportation both ways.

No catalogues of books in the circulating department of the State Library are sent to patrons, for the following reasons: 1—We have no appropriation for the publication of a catalogue. 2—We are continually adding new books, and a catalogue would not show what could be furnished. 3—Thousands of books are continually in circulation, and we would rarely be able to furnish the list made from a catalogue.

Where patrons desire it, a list of books can be made in accordance with general directions and submitted for approval before the Traveling Library is shipped.

If a list of books desired is sent with the application, it will be furnished as nearly as possible; if only the general subjects are named, books relating to those subjects will be sent.

The Ohio State Library desires a wider circulation for its Traveling Libraries. Those interested are invited to correspond.

For further information address "State Librarian, Columbus, Ohio."

INDEX.

A.

Absence.	PAGE.
Board of education to ascertain, 4025.....	154
Excuse for, 4022-1.....	145
Habitual truant, punishment, 4022-4-7-10.....	148-151
Abstract.	
Enumeration, failure to transmit to county auditor, action taken, 4036	159
Auditor of county to transmit to state commissioner of common schools, 4039	160
Statistics, transmitted by county auditor to state commissioner of common schools, 4060.....	168
Academy. (See College.)	
General provisions as to 3726-3771a.....	212-230
Military, how constituted, 3757.....	223
Board of visitors for, 3758, 3759.....	223
Report of to state commissioner of common schools, 363.....	11
Account.	
Cincinnati University trust funds, 4101.....	188
Clerk of school districts, how kept, 4055.....	165
Common school fund, 3954, 3955.....	71
Contingent school fund, 3961, 3962.....	76, 77
Educational institutions accounts of officers, 3769.....	228
School funds, account of by auditor of state, 3954, 3955.....	71
Schools specially endowed, accounts of, 4105-71.....	211
Treasurer of school funds, accounts of, 4055.....	165
Accountant.	
Appointment of to investigate funds, 364.....	11
Powers, duties and compensation, 365.....	12
Account Books.	
Clerks and treasurers furnished by county auditor, 4055.....	165
Advertisement.	
Bonds, for sale of, 22b (footnote).....	99
Building school houses, bids for, 3988.....	95
Bonds, sale of, must be, 22b (footnote).....	99
Affirmation.	
Directors of subdistricts, on election, 3916.....	52
Age.	
Youth of school age, 4013, 4030.....	133, 157
Alcoholic Drinks. (See Scientific Temperance Instruction.)	
Alumni. (See Colleges.)	
Election of trustees and visitors, by, 3747, 3749.....	218, 219
Apparatus.	
Appropriation of money for, 3995.....	101
Limit of appropriation, 3995.....	101

A

Index.

Appeal.	PAGE.
COUNTY COMMISSIONERS.	
Contingent fund, apportionment of in townships, may be, to, 3967	79
Transfer of territory, may be, to, 3893.....	16
PROBATE COURT.	
Excuse of child from school, to, 4022-1.....	145
Joint subdistricts, formation of, 3934.....	64
Special districts, creation of, 3948	67
Subdistricts, creation of, 3948.....	67
Village districts, creation of, 3948.....	67
Appointment. (See respective titles of boards, officers etc.)	
General rule in regard to, 11 (footnote).....	89
Apportionment.	
Contingent fund, by township board, 3967.....	79
Revision of, by county commissioners, 3967.....	79
Deaf children, funds for schools for, 4009-5.....	126
Joint subdistricts, funds for, 3961.....	76
When county line divides, 3962.....	77
Ohio and Miami Universities, funds for, 3951b.....	70
Salt lands, interest on proceeds of sale of, 3952.....	70
State school funds, by auditor of state, 3956.....	71
When county line divides original surveyed township, 3957.....	72
School funds, by county auditors, 3964, 3966.....	77, 78
Distribution of money after apportionment, 3965.....	78
Township to newly created village or special district, 3946a.....	67
Transfer of territory, after, how made, 3893.....	16
Appropriation.	
Cincinnati common council, by, for site of university, 4103.....	189
Cleveland public library, for, 4002-18.....	110
Private property, of, for school purposes, 3990.....	97
School funds, of, when illegal, 2834b (footnote).....	85
Vote necessary for certain appropriations, 3982.....	90
Art Association or College.	
Accounts, 3769	228
Attorney General to enforce trusts of, 3771.....	229
Bequests, etc., may accept, 3727.....	213
Objects, articles of incorporation may be extended to others, 3768....	228
Trustees ineligible to office in, 3770.....	229
Articles of Incorporation.	
Educational institutions, certain, 3762a.....	224
Fine art, law, etc., association, what may provide, 3767.....	227
Supplement for colleges, 3768.....	228
Assessment.	
Colleges, etc., amount, how fixed, 3755, 3756.....	222, 223
Meeting for, 3754.....	222
Stockholders, against, 3753.....	222
Assignment of Youth.	
Board of education may, 4013.....	133

Index.

A—B

	PAGE.
Astronomical Observatory.	
Cincinnati University may establish, 4104.....	189
Tax levy for, 4104.....	189
Attendance. (See Compulsory Attendance.)	
Closing of schools during epidemic, 2135 (footnote).....	92
Compulsory education, requirements, 4022-1-4029.....	145-154
Night schools at, 4012, 4012a.....	133
Attendance at, equivalent to what at day school, 4029.....	154
One and one-half miles from school, privilege of pupils living, 4022-a	144
Non-residents, by agreement of boards of education, 4022.....	144
Youth entitled to at school, free, 4013.....	133
Attorney General.	
Educational institutions, duties as to 3771.....	229
Ohio State University board, legal adviser of, 4105-17.....	195
Auditor. (See County Auditor.)	
Cleveland, city auditor to be director of accounts, 3899-11.....	31
Election of auditor of board, in, 3980.....	88
Auditor of State.	
Apportionment of school funds, by, 3956.....	71
Requests to school funds, accounts of, 3955.....	71
Ohio State University, duties as to, 4105-46, 4105-47, 4105-49	
4105-50	204, 205
Virginia military land, duties as to, 4105-48.....	204
B.	
Ballot. (See Election.)	
Director of subdistrict elected by, 3916.....	52
Election of members of boards of education in special districts,	
by, 3924	59
Village districts, by, 3908.....	48
Ballot Box.	
Separate, for women, 3970-11.....	84
In certain other districts, 3902.....	45
Bequests.	
Boards of education may accept, 3975.....	87
Cleveland library board may accept, 4002-4.....	107
College or university may hold in trust, 3727.....	213
Common school fund, to, how applied, 3955.....	71
County commissioners, may accept educational, 20-1 (footnote)....	181
Library boards in city and village districts, may accept, 4002-44.....	120
Ohio State University, bequests to, 4105-15.....	194
Toledo library board, may accept, 4002-31.....	115
Bids, Bidders, Bidding.	
School houses, construction of, 3988.....	95
Cleveland, in, 3899-21.....	33
Toledo, in, 3899-33.....	40
Blanks.	
Board of education, report of, blanks for, 4058.....	167
County auditor to distribute, 4058, 4060.....	167, 168.
Blank books, furnished by, 4055.....	165

B

Index.

	PAGE.
Blanks—Concluded.	
School youth, blanks for enumeration of, 4039.....	160
Teachers' report of attendance under compulsory education law, 4022-6	149
Truant officer, blanks for, 4022-5.....	148
Blind.	
School, attendance of blind persons compulsory, 4022-10.....	151
Board of Education. (See School Districts.)	
CITY SCHOOL DISTRICTS, IN	
Classification, 3885, 3886.....	14, 15
East Liverpool; number, terms, 3898a.....	27
First Class	
Board of examiners in, to appoint, 4077.....	177
Compensation of examiners, 4082.....	179
Constituted how, board of education, 3898.....	25
Meetings of, 3903.....	45
Members of, 3898.....	25
Election of, qualifications, term 3898.....	25
Rules and regulations, 3903.....	45
Sinking fund, 3970-3970-9.....	81-83
Teachers' institutes in, 4092.....	183
May dismiss school to attend, 4091.....	182
Vacancy in, how filled, 3903.....	45
Vote of electors residing in attached territory, 3900.....	44
Duty of board in such cases, 3900.....	44
First class, first grade. (See Cincinnati.)	
Constituted, how, 3897.....	20
Meetings of, 3903.....	45
Members of, 3897.....	20
Election of, in new wards, 3897.....	20
Qualifications of, term, 3897.....	20
Rules and regulations of, 3903.....	45
Teachers' appointment, confirmed by, 3897.....	20
Vacancies in, how filled, 3897, 3903.....	20, 45
First class, second grade. (See Cleveland.)	
Bonds, 3994a, b, c, d.....	100, 101
Meetings of, 3903.....	45
Rules and regulations, 3903.....	45
Vacancies, how filled, 3903.....	45
First class, third grade. (See Toledo.)	
Classified, 3885.....	14
Meetings of, 3903.....	45
Rules and regulations, 3903.....	45
Vacancies, how filled, 3903.....	45
Massillon board, how constituted, 3898.....	25
Portsmouth, number, terms, 3898a (2).....	28
Second class	
Classified, 3885, 3887.....	14, 15
Constituted how, 3904.....	46
Meetings of, notice, 3909.....	48
Member of, election, 3905, 3907.....	47

Index.	B
Board of Education — Continued.	PAGE.
Number of, increased, 3907, 3911.....	47, 49
Term of, 3905.....	47
CLERK OF. (See Clerk of Board of Education.)	
SPECIAL DISTRICTS. (See Special Districts.)	
Classified, 3885, 3891.....	14, 16
Constituted how, 3923, 3946.....	59, 66
Duties of, in abandoned district, 3926, 3927.....	60
Election of, 3924, 3925.....	59
Increased how, 3923.....	59
Members, property and debts, if district abandoned, 3927.....	60
Members of, 3923.....	59
New district, election in, 3924.....	59
Term of office, 3924.....	59
TOWNSHIP DISTRICTS. (See Township Districts.)	
Classified, 3885, 3890.....	14, 16
Election of directors and subdirectors, 3916, 3917.....	52, 53
High school, township or joint township, 4009-15-4009-20.....	128-130
Joint subdistricts, establishment of, 3928.....	62
Action against district board, 3961a.....	76
Control of school, in, 3929.....	63
Correction of error, 3961.....	76
Dissolution of, by boards, 3950.....	68
Petition for establishment of, 3921, 3932.....	55, 63
Site, designation of, 3941a.....	65
Meetings of, 3920.....	55
Members of, 3915.....	52
Organization of, when, 3915.....	52
Subdistricts, creation of by petition, 3946.....	66
Boundaries of, changed, how, 3921, 3922.....	55, 58
VILLAGE DISTRICTS.	
Classified, 3885, 3888.....	14, 15
Constituted, how, 3904.....	46
Election of, 3908-3910.....	48, 49
Members of, 3904.....	46
Membership increased, how, 3911.....	49
Organizaton of village into village district, 3914.....	51
Term of, 3908.....	48
GENERAL PROVISIONS.	
Absence of president and clerk, 3983.....	90
Accommodation for all children, 4022-13.....	153
Admission to schools of those not entitled by right to attend, 4013.....	133
Apparatus, may purchase, limited, 3995.....	101
Appropriate private property, 3990.....	97
Assigning pupils to schools, 4013.....	133
Attendance, duties as to, 4025.....	154
Compulsory, 4022-1-4029.....	145-151
Attestation of record of, 3984.....	90
Auditor, certain boards appoint, 3980.....	88
Bequests, acceptance and rules 3975.....	87
Boards of examiners, appointment of, 4077, 4084.....	177, 180
Compensation and expenses of, 4082.....	179

B	Index.	
Board of Education—Continued.		PAGE.
Bond of treasurer, approval of, 4043.....		161
Bonds issued by, for school house, 3993, 3994.....		99, 100
To extend debt, 2834a (footnote).....		98
Centralization of township schools authorized, 3921-3921-8.....		55-58
Children's home school at, authorized, 4010.....		131
City Solicitor, is legal advisor of, 3977.....		87
Shall not be a member of the board, 3977.....		87
Compensation, none except, 3974.....		87
Penalty for receiving, 6975 (footnote).....		87
Contingent fund, apportionment of, 3967.....		79
County commissioners to levy, when, 3969.....		79
Estimate for, to be made by board, 3958.....		72
Certify estimate to county auditor, 3960.....		75
Joint subdistricts, estimate for 3961, 3962.....		76, 77
Contract of, no member shall have interest in, 3974.....		87
If money not set aside, void, 2834b (footnote).....		85
Must be authorized by board, 3974.....		87
Contract for building, repairing etc., how let, 3988.....		95
Conveyances, how executed, 3971, 3974.....		84, 87
Corporate powers of, 3971.....		84
Deaf children, schools for in		
Cincinnati and Cleveland, 4009-3-4009-8.....		126-127
General law in regard to, 4009-9-4009-14.....		127, 128
Debt, extension of time on, change of, 2834a (footnote).....		98
Elections. (See Elections.)		
Embezzlement of member, penalty, 6846 (footnote).....		165
Employees of, term, 4017.....		135
Employing relatives as teachers unlawful, 6975a (footnote).....		135
Entertainments in school houses, 3987-1.....		94
Evening schools, 4012, 4012a.....		133
Exchange of real property by, 3971.....		84
Exemption from taxes and execution, 3973.....		86
Expulsion of pupils, vote necessary, 4014.....		134
Female suffrage, 3970-10-3970-12.....		84
Flag, U. S., on school houses, 3986-1.....		92
Forms relating to bonds.....		241-243
Funds in hands of treasurer, duty of board as to, 4043.....		161
Free school books, 4026.....		154
German language, teaching of, when required, 4021.....		143
High schools, board may establish, how, 3921-1 to 3921-8, 4009, 4009-1, 4009-2, 4009-15 to 4009b.....		56-58, 125, 126, 128-131
Illegal loan or deposit by officers may be recovered, 21, (footnote)		161
Infirmity, school at, 4010.....		131
Intoxicating liquors, to cause instruction as to, 4020-23-4020-25.....		142, 143
Joint subdistricts in, action against for negligence, 3961a.....		76
General provisions in regard to, 3928-3950.....		62-68
School house in, erection of, change of site, 3989.....		96
Kindergarten may be established, 3958a.....		73
Library. (See Library.)		
Appropriation of money from contingent fund for, 3995.....		101
Cincinnati, appoints members of library board, 3999.....		102

Index.

B

Board of Education—Continued.

PAGE.

City, fourth grade, second class, may levy tax for, 4002-46..	120
Dayton, board may levy tax for, 4002-36.....	116
Levy of tax for, 3996, 4002, 4006.....	102, 106, 121
Managers of, board may elect, 3999.....	102
In Cleveland, 4000.....	105
In Portsmouth, 4004.....	121
Meetings of, 3903, 3909, 3920.....	45, 48, 55
Illegal, when, 3985.....	91
Music, instruction in, 4017a.....	136
Non-residents, admission of to schools, when, 4013-4022.....	133, 144
Oath of members and officers, 3979.....	88
Who may administer, 3979.....	88
Officers, selection of, 3980.....	88
Organization of, 3980.....	88
Orphans' asylums, schools at, 4010.....	131
Penalty on members for neglect of duty, 3969.....	79
Physical culture, instruction in, 4020-17.....	141
President of Board. (See President.)	
Primary schools, establishment of, 4007.....	124
Process against, how served, 3976.....	87
Property, title to, of boards, 3972.....	86
Exempt from taxation and execution, 3973.....	86
Prosecuting attorney, legal adviser of, 3977.....	87
Quorum of, 3982.....	90
Record of proceeding of, 3984.....	90
Record of schools, kept by teachers and superintendents, 4059..	167
Relief of children, board authorized to afford, 4022-9.....	151
Report by, made to county auditor, 4057.....	167
Superintendents' and teachers' report to board, 4059.....	167
Resolutions requiring ye and nay vote, 3982.....	90
Rules and regulations of, 3985.....	91
Sale of property by, restrictions, 3971.....	84
At private sale, when, 3971.....	84
At public auction, 3971.....	84
Schools, control and management of, to have, 4007, 4017.....	124, 135
Continued, must be, how long, 4007.....	124
Employees, in appointment, dismissal and salaries of, 4017...	135
Sufficient number must be provided, 4007.....	124
School houses, grounds, etc., to provide, 3987.....	94
Contracts for, bidding and letting, 3988.....	95
Tax levy for, 3991-3994.....	97-100
Use of for purposes other than educational, 3987-1.....	94
Scientific temperance instruction, duties as to, 4020-23-4020-25..	142-143
Service of process on, 3976.....	87
State commissioner of common schools to confer with, 357.....	10
Superintendent, appointment of, 4017.....	135
Surety of treasurer, additional may be required, 4043.....	161
Suspension of pupils, 4014.....	134
Taxation By. (See Tax.)	

B

Index.

Board of Education — Concluded.

PAGE.

Levy by board for school house, 3991-3994.....	97-100
Maximum levy, 3959.....	73, 74
School property exempt from, 3973.....	86
Teachers, employment and dismissal of, 4017.....	135
Certificate, must have, 4074.....	175
Members related to, cannot vote for, 6975a (footnote).....	135
Order for pay of, how drawn, 4018.....	136
Teachers' institutes, aid for, in cities, 4092.....	183
Text books, adoption of, 4020-12-4020-14.....	139
Bribery, recommendation of text books for a consideration, constitutes, 6975a (footnote).....	135
Free school books, 4026.....	154
Publishers' failure to furnish, action by board, 4020-13.....	139
Purchase and sale of by board, 4020-14.....	139
Tie vote, decided by lot, 3978.....	88
Title to what property, boards have, 3972.....	86
Transfer of territory, by, 3893.....	16
Treasurer of. (See Treasurer of Board of Education.)	
Truant officer, must employ, 4022-5.....	148
Tuition, agreement between boards for payment of, 4022.....	144
"Boxwell Law," payment under, 4029-1.....	155
"One and one-half mile," law, 4022a.....	141
U. S. flag, display of, 3986-1.....	92
Vacancies in, how filled, 3978, 3981.....	88, 89
Vaccination, may enforce rules, 3986.....	92
Free, when, 3986.....	92
Yea and nay vote, when required, 3982.....	90

Board of Examiner. (See State Examiners, County Examiners, City and Village Examiners.)

Board of Health.

Inspection of schools, 2135 (footnote).....	92
Vaccination, 2135 R. S.....	92
In schools, 3986.....	92

Board of Subdirectors. (See Subdistricts.)

Board of Visitors. /

Alumni may appoint, 3747.....	218
College, of, 3742.....	217
Compulsory education, duties as to, 4022-11.....	152
Military academies, of, 3758, 3759.....	223
Religious bodies may appoint, 3742.....	217
Schools especially endowed, of, 4105-72.....	211

Bonds.

Advertisement of sale of, 22b (footnote).....	99
Bids may be rejected, 22b (footnote).....	99
Centralization, issue for, 3921-4.....	57
Cincinnati, treasurer of pension fund, 3897g.....	25
Cleveland, deficiency bonds, 3994a-3994d.....	100, 101
Director of accounts, of, 3899-16.....	32
Library bonds, 4002-11, 4002-12.....	108
Clerk of board of education of, 4050.....	164

Index.

B—C

Bonds — Concluded.

PAGE.

Clerk of city and village board of examiners, 4079.....	178
Clerk of county board of examiners, 4076.....	176
Columbus, for manual training schools, 4020-22.....	142
Compulsory education, parents must give, 4022-7.....	149
Debt, refunding or changing, issue for, 22b (footnote).....	99
Educational institutions, may issue, 3734.....	214
Forms of.....	241-243
Ohio State University, treasurer of, 4105-14.....	194
Sale of, public, 22b (footnote).....	99
Money must go to funds for which bonds were issued, 22b (footnote)	99
Par, must be sold at, 22b (footnote) 3993.....	99
School house, bonds for, 3993.....	99
In city districts, 3994.....	100
Schools specially endowed, trustees of, 4105-70.....	211
State commissioner of common schools, of, 355.....	9
Security for costs, petition for joint subdistrict, 3935.....	64
Teachers' institute committee, of, 4036.....	181
Forfeiture of, 4089.....	182
Toledo, business manager, of, 3899-31.....	39
Library, building bonds, 4002-23, 4002-24.....	111-113
Treasurer of board, 3899-34.....	39
Treasurer of board, 4043.....	161
Wilberforce University, treasurer of, 4105-62.....	207

Books. (See Text Books.)

Board of education may buy books for library, 3995, 4006.....	101, 121
School fund, examination of books, 364, 366.....	11-12

Boundaries.

Joint subdistricts of, boards of education to fix, 3928.....	62
Subdistricts, existing boundaries of, 3892.....	16
Changed, how, 3921.....	55
Transfer of territory from one district to another, 3893.....	16

Boxwell Law.

Compensation of examiners, 4029-4.....	156
County commencements, 4029-2.....	155
Examinations, 4029-1.....	155
Township commencements, 4029-2.....	155
Tuition, payment of, 4029-1, 4029-3.....	155

Boys Industrial School.

Notice to county visitors before commitment to, 4022-11.....	152
--	-----

Bribery.

Text books, recommending of, for a consideration, is, penalty, 6975a (footnote).....	135
---	-----

C.**Cadets.**

Rules for, etc., at military academies, 3757.....	223
---	-----

Centralization.

Board of education may centralize schools, 3921.....	55
Must centralize when, 3921-2.....	56

C

Index.

Centralization—Concluded.

PAGE.

Reorganization of, 3921-5, 3921-6.....	57
Clerk and treasurer of, 3921-7.....	58
"Centralization" defined, 3921-1.....	56
Course of study, 3921-8.....	58
Election on question of, how conducted, 3921-2, 3921-3.....	56
Bond issue for, 3921-4.....	57
High schools, provided for, 3921-8.....	58
Laws governing schools, 3921-7.....	58
Petition for, 3921-2.....	56
Transportation of pupils, 3921, 3921-8.....	55, 58

Certificate.

Branches of study enumerated, 4074.....	175
City and village districts, examinations in, 4078.....	117
Examination fee, 4081.....	178
Granting certificates in, 4081.....	178
Revocation of certificates in, 4081.....	178
Cincinnati, life certificates in, 4081-1.....	179
Cleveland, indebtedness, certificate of, 4020-20.....	142
County certificate, majority of board may grant, 4071.....	172
Examination fee, 4071.....	172
Grades of, different, 4073.....	174
Granting of, how, 4073.....	174
Primary certificate, 4074.....	175
Requirements necessary, for, 4073.....	174
Revocation of, proceedings, 4073.....	174
Special, granting of, 4074.....	175
Valid, where, 4073.....	174
Deaf children, teacher of schools for, must hold, 4009-13.....	128
Election of teachers in townships, certificate of, 4017.....	135
Scientific temperance examination in, required, 4020-24.....	143
State certificate, issue of, 4066.....	170
Effect of, where valid, 4067.....	171
Examination fee, 4068.....	171
Revocation of, 4067.....	171
Tax levy, certificate to county auditor, of, 3960-3962.....	75-77
Teacher must have, 4074.....	175
Filed with clerk, must be, or copy, 4051.....	164
Certificate of service, 4018.....	136
Transfer of territory, certificate of, to county auditor, 3893.....	16

Chairman.

Election in joint subdistricts, of, 3949.....	68
Special districts, 3924, 3926.....	59, 60
Subdistricts, 3917, 3922.....	53, 58
Village districts, 3908, 3913.....	48, 50
Joint subdistricts, meeting to establish, of, 3928.....	62

Change of Districts.

Advancement of municipal corporations, 3889.....	15
Exception as to villages, 3889.....	15
Special district to subdistrict, 3926, 3927.....	60
Township district to village district, how made, 3894-3896.....	17, 18

Index.

C

	PAGE.
Change of Districts — Concluded.	
Transfer of territory, 3893.....	16
Appeal in such cases, 3893.....	16
Charity School~ (See Zanesville.)	
Charter.	
Educational institutions, amendment of etc., 3762a.....	224
Children's Home.	
Children at, can attend schools, when, 4013.....	133
Schools at, 4010.....	131
Christmas.	
Dismissals of schools on, 4015.....	134
Cincinnati.	
Board of education, how constituted, 3897.....	20
Board of examiners, may grant life certificates, 4081-1.....	179
Deaf children, schools for, 4009-3-4009-8.....	126, 127
Library, board of trustees, 3999.....	102
Access to, by all residents of Hamilton county, 3999a.....	103
Control of, by trustees, 3999b.....	103
Fund heretofore raised, disposition of, 3999d.....	105
Librarian and assistants, employment of, 3999b.....	103
Membership of board of trustees, limited, 3999e.....	105
Tax for library purposes, 3999c.....	104
Tax levy, maximum, 3959.....	73, 74
Teachers, appointment of, 3897a.....	21
Teachers' pension fund, 3897b-3897i.....	22-25
City treasurer, duties as to, compensation, 3897g.....	25
University of, 4095-4104.....	186-189
Cincinnati University. (See University of Cincinnati.)	
City and Village Examiners.	
Appointment, term, vacancies, 4077.....	177
Cincinnati, may grant life certificates, 4081-1.....	179
Compensation and expenses of, 4082.....	179
Examinations, how conducted, 4078.....	177
Expert, assistance of, in difficult branches, 4078.....	177
Fees for examination, 4081.....	178
Disposition of, 4083.....	179
Granting of certificates, 4081.....	178
Law made applicable to all city and certain village districts, 4084....	180
Meetings of, how often, 4080.....	178
Membership, number, qualifications, 4077, 4084, 4085.....	177, 180
Organization of board, 4079.....	178
Record, how kept, 4083.....	179
Report of appointment, to state school commissioner, 4077.....	177
Revocation of appointment, 4077.....	177
Scientific temperance, examination in, 4020-24.....	143
City Districts.	
Attendance in, compulsory, 4022-1.....	145
Board of examiners, in, 4077-4085.....	177-180
City Solicitor, legal advisor of, 3977.....	87
Classified, 3885.....	14

C	Index.	
City Districts — Concluded.		PAGE.
Clerk of board of education, 3980, 4050, 4056.....	88, 164, 166	
Kindergarten, board may provide, 3958a.....	73	
Libraries, tax levy for, in, 3996.....	102	
Cities of certain size may establish, 4002-39-4002-45.....	118-120	
City districts, second grade, fourth class, library in, 4002-46, 4002-47	120	
Managers of, in certain cities, 3999.....	102	
Sinking fund, 3970-6-3970-9.....	82, 83	
Tax levy, maximum, 3959.....	73, 74	
Treasurer of school boards, 4042-4049, 4055.....	160-163, 165	
First Class, (See Cincinnati, Cleveland, Columbus, Dayton, East Liverpool, Massillon, Portsmouth, Toledo.)		
Advancement of corporation changes district, 3889.....	15	
Attached territory, elections in, 3902.....	45	
Board of education in, election of, 3898.....	25	
Organization of, 3980.....	88	
Bonds issued by, 3994.....	100	
Classification of, 3885, 3886.....	14, 15	
Electors in attached territory, vote of, 3900.....	44	
Meetings of boards of education, 3903.....	45	
Rules and regulations, 3903.....	45	
Teachers' institutes, in, 4092.....	183	
Second Class.		
Advancement of corporation, changes district, 3889.....	15	
Board of education, election of, 3905, 3906, 3907.....	47	
Members of, 3904.....	46	
Membership increased, how, 3911.....	49	
Notice of election, 3909.....	48	
Organization of, 3980.....	88	
Returns of election, 3910.....	49	
Term of members, 3905.....	47	
Classification of, 3885, 3887.....	14, 15	
City Solicitor.		
Legal advisor of boards of education, 3977.....	87	
Shall not be a member of the board, 3977.....	87	
Classification.		
Change of, by advancement, 3889.....	15	
City districts, first class, 3886.....	15	
Second class, 3887.....	15	
Special districts, 3891.....	16	
Township districts, 3890.....	16	
Village districts, 3888.....	15	
Clerk of Board of Education.		
Abandonment of special districts, duties of special and township clerks as to, 3927.....	60	
Absence of, at meetings, who acts, 3983.....	90	
Absentees from schools, prosecution of, duties as to, 4025.....	154	
Accounts of, how kept, 4055.....	165	
Blanks for reports under compulsory education law, must furnish, 4022-6	149	

Index.

C

Clerk of Board of Education — Concluded.

PAGE.

Bond of, 4050.....	164
Centralized townships, is clerk of, 3921-7.....	53
Certificate of estimate for tax levy, to county auditor, 3960.....	75
Transfer of territory, of, when, 3893.....	16
Compensation of, 4056	166
Compulsory attendance, may excuse from, 4022-1.....	145
Election of, 3980.....	88
Enumeration return to county auditor, 4035.....	155
Liable for damages for failure to make, 4036.....	159
Penalty for failure, 4038.....	159
Forms relating to.....	237-242
Joint subdistricts, petition for, to be filed with, 3932, 3933.....	63
Meeting of commissioners to establish, must be present at, 3940	65
Library books, bill for must be certified, 3997.....	102
Moneys received by, must be, 4047.....	163
Notice of election in city districts, second class, 3909.....	48
In special districts, 3925.....	59
In township districts, 3917.....	53
In village districts, 3909.....	48
Oath of, 3979.....	88
May administer to others, 3979.....	88
Order on treasurer, must sign, 4018, 4047.....	136, 163
For teachers' pay, illegal, when, 4051.....	161
Petition for additional subdistrict, filed with, 3946.....	66
Of special district, 3946.....	66
Of village district, 3946.....	66
Publication of receipts and expenditures, 4053.....	165
Record of proceedings, kept by, 3984.....	90
Reports required of, 358, 4052, 4057, 4058.....	10, 164, 167
Penalty for failure to make, 4061, 4062.....	168
School examiner of appointment, 4077.....	177
State school commissioner may require, 358.....	10
Roll call, when required, 3982.....	90
Successor, property turned over to, 4054.....	165
Township clerk is clerk of board, 3915.....	52
Township commencement, clerk to hold, 4029-2.....	155

Clerk of Boards of Examiners.**CITY AND VILLAGE BOARDS OF.**

Bond of, 4079.....	178
Compensation of, 4082.....	179
Fees, disposition of, 4083.....	179
Record, kept by, 4083.....	179
Reports of, 4077, 4083.....	177, 179

COUNTY BOARDS OF.

Bond of, 4076.....	176
Compensation of, 4070.....	172
Election of, 4070.....	172
Fees, disposition of, 4072.....	173
Record to be kept, 4070.....	172

C	Index.	
Clerk of Boards of Examiners — Concluded.		PAGE.
Report by to county auditor, 4072.....		173
To state school commissioner, 4070, 4076.....		172, 176
Clerk of Township. (See Township Clerk.)		
Cleveland.		
BOARD OF EDUCATION.		
Auditor of board, who is, 3899-11.....		31
School council.		
Appropriations must be made by, 3899-14.....		31
Business methods of, 3899-4.....		29
Election of, 3899-3.....		29
Impeachment of members of, 3899-22.....		34
Libraries, powers as to, 3899-5.....		30
Manual training schools, 3899-5.....		30
Meetings of, 3899-3.....		29
Organization of, 3899-3.....		29
Teachers, employment of, 3899-5.....		30
Vacancies in, how filled, 3899-9.....		30
School director.		
Bond of, 3899-8.....		30
Compensation of, 3899-8.....		30
Duties of, 3899-8.....		30
Election and powers of, 3899-6.....		30
Employees, appointed by, 3899-10.....		30
Impeachment of, 3899-22.....		34
Term of office, 3899-7.....		30
Vacancy in, how filled, 3899-9.....		30
Bonds, deficiency, issue of, 3994a, 3994b.....		100
Contracts by board, binding, when, 3899-19.....		33
Letting of, how, exceptions, 3899-21.....		33
Must be in writing, when, 3899-20.....		33
Deaf children, schools for, 4009-3-4009-8.....		126, 127
DIRECTOR OF ACCOUNTS.		
Appropriations, must be by school council, 3899-14.....		31
Assistants of, appointed by school council, 3899-16.....		32
Bond of, 3899-16.....		32
City auditor to be director, 3899-11.....		31
Claims, legality of, 3899-13.....		31
Duties of, 3899-11, 3899-12.....		31
Liability of, 3899-15.....		32
Office of, former abolished, 3899-18.....		33
Reports of, 3899-16.....		32
Teachers, payment of, 3899-12.....		31
LIBRARY.		
Access, who entitled to, 4002-10.....		108
Bonds, issued by board; how, 4002-11, 4002-12.....		108
Building and grounds, how acquired, 4002-2, 4002-3.....		106, 107
Contract, invalid, when, 4002-9.....		107
Donations may be accepted, 4002-4.....		107
Library board, election, membership, 4000.....		105
Oath of members of, 4002-6.....		107

Index.

C

Cleveland — Concluded.

PAGE.

Organization of, 4002-7.....	107
Powers and duties of, 4001.....	105
Report of, 4002-8.....	107
Property exempt from taxation and execution, 4002-5.....	107
School funds used for library, 4002-18.....	110
Sinking fund, 4002-13-4002-17.....	109, 110
Tax for library, how expended, 4002.....	106
Title to property, management of, 4002-1.....	106
Manual training schools, 4020-18-4020-20.....	141, 142
Offices, former abolished, 3899-23.....	35
Superintendent, appointment of, 3899-10.....	30
Teachers, appointed by, 3899-10.....	30
Term of, 3899-10.....	30
Tax levy, maximum, 3959.....	73, 74
Teachers, appointment of, 3899-10.....	30
Pension fund of, 3899a-3899p.....	35-37
Treasurer of board, duties, 3899-17.....	33

Colleges and Universities

Cincinnati University. (See University of Cincinnati), 4095-4104....	186-189
--	---------

INCORPORATED INSTITUTIONS.

Accounts of, how kept, report, 3769.....	228
Alumni may elect trustees, 3747.....	218
Appoint visitors, 3747.....	218
Election, conduct of, 3748, 3749.....	218, 219
Attorney General, duties as to, 3771.....	229
Board of trustees, election of, 3751b.....	220
Membership, increase in number, 3751a-3771a.....	220-230
Ineligible, who are, 3770.....	229
Quorum of, 3745.....	218
Term of office, 3760.....	223
Vacancies, how filled, 3733.....	214
Bonds, trustees may issue, 3734.....	214
Charter, amendment of, 3762a, 3762b.....	224, 225
Directors and trustees of certain associations, 3767.....	227
Endowment fund of, 3750.....	219
Diverted, how, 3732.....	214
Faculty of, its powers, 3728.....	213
Hazing, unlawful, penalty, 6819-1 (footnote).....	14
Laws, benefits of, how acquired, 3746, 3751.....	218, 220
Location, change of, 3731, 3761.....	214, 223
Mechanics and agriculture, 3729.....	213
Mechanics institutes may borrow money, 3768-1.....	228
Directors' liability, 3768-2.....	228
Medical college, bodies for dissection, 3763, 3764.....	226, 227
Name, change of, 3762a, 3762b.....	224, 225
May be religious denomination, 3751b.....	220
Organization of, 3726.....	213
Patron, what may be, 3741.....	217
Property, increase of, 3734.....	214
Sale of, 3762.....	224

Colleges and Universities — Concluded.	PAGE.
May hold in trust, 3727.....	213
Purposes, set forth, may be, when, 3751b.....	220
Change of, 3762a, 3762b.....	224, 225
May be added to, 3768.....	223
Religious control of, 3736-3740, 3751c.....	215-217, 221
Religious body entitled to representation, 3744.....	217
Representation to cease, when, 3743.....	217
Statement of property to be filed, 3735.....	215
Stock changed to scholarship, 3730.....	213
Stockholders' liability, 3753-3756.....	222, 223
Visitors, appointment of, 3742.....	217
Ohio University. (See Ohio University), 4105-1-4105-7.....	191, 192
Ohio State University. (See Ohio State University), 4105-9-4105-53..	193-206
Reports of, 363.....	11
State commissioner of common schools, employment of, by, pro- hibited, 356.....	10
Toledo University (See Toledo University), 4095-4105.....	186-190
Wilberforce University (See Wilberforce University), 4105-54-4105-66.	206-208
Columbus.	
Manual training schools, support of, 4020-21, 4020-22.....	142
Park, board authorized to donate land to, 3903-1.....	45
Commencements.	
County commencements under "Boxwell Law," 4029-2.....	155
Township commencements under "Boxwell Law," 4029-2.....	155
Expenses of, how paid, 4029-4.....	156
Commissioner. (See State Commissioner of Common Schools, County Com- missioners.)	
Commissioners.	
Joint subdistricts, establishment of, by, 3936-3945.....	64-66
Committees.	
Standing committees of township boards, 3920.....	55
Teachers, action on recommendation of, 4017.....	135
Common Pleas Court.	
Appointment of board of education for union high school district, 4009b	131
Judge of, duty as to report of examiner of funds, 366.....	13
Schools specially endowed, appointment of trustees for, 4105-67.....	210
Common School Fund. (See Funds)	
Compensation.	
Board of education, members of, shall not receive, 3974.....	87
Cincinnati, city treasurer, of, 3897g.....	25
City and village boards of examiners, of, 4082.....	179
Clerk of board of education, 4056.....	166
County auditor, of, 4064.....	169
County examiners, of, 4075.....	176
Clerk of, 4070.....	172
Under Boxwell Law, 4029-4.....	156
Enumerators, of, 4031.....	157
Examiner of school funds, 365.....	12

Compensation—Concluded.

PAGE.

Library boards, shall not receive, 3999, 4000; 4002-21, 4002-40	102, 105, 111, 118
Ohio State University, officers of, 4105-44	204
Prosecuting Attorney, shall not receive, 3977	87
Treasurer of board of education, 4042, 4056	160, 166

Complaint.

Form, 36	244
Funds, fraudulent use of, in regard to, 364	11

Compulsory Attendance.

Age of youth affected, 4022-1, 4022-2	145, 146
Attendance necessary, 4022-1	145
Minors between 14 and 16, 4022-3	147
Night schools at, equivalent to what, 4029	154
Blind institution, in regard to, 4022-10	151
Board of county visitors, duties, 4022-11	152
Boards of education to ascertain condition of children under 14 years 4025	154
Branches of study required, 4022-1	145
Corporation, violation of by, penalty, 4022-11	152
Deaf and dumb institution, in regard to, 4022-10	151
Employment of minors under 14, 4022-2	146
Between 14 and 16, 4022-3	147
Penalty for violation, 4022-3	147
In mines, 302 (footnote)	147
Excuse, how obtained, 4022-1	145
Forms relating to	244-247
Free school books, 4026	154
Inoperative, when, 4022-13	153
Jurisdiction of courts, 4022-11	152
Juvenile disorderly persons, defined, 4022-4	148
Proceedings against, 4022-8	150
Penalties for violations, 4022-11	152
Repeated violations, 4022-12	153
Under former law, 4027	154
Relief to enable child to attend school, 4022-9	151
Reports of public and private schools, 4022-6	149
Seating accommodations necessary, 4022-13	153
State commissioner of common schools, duties as to, 4022-14	153
Tax levy authorized, 4022-13	153
Truancy, proceedings in cases of, 4022-7	149
Penalties, 4022-7	149
Truant officer, appointment, powers, duties, 4022-5	148

Consolidation.

Subdistricts, of, 3921, 3922	55, 58
------------------------------	--------

Constitution of Ohio.

Encouragement of schools, Art. 1, Sec. 7	5
Oath to support, 3979	88
School funds, preservation of, Art. 6, Sec. 1	5
Provision of, by taxation, Art. 6, Sec. 2	5
School laws, excepted from general rule, Art. 2, Sec. 26	5

C	Index.	
Construction.		PAGE.
Laws, of, decisions and opinions.....		7
Contingent Fund.		
Apportionment of, in township districts, 3967.....		79
Board of education to provide, 3958.....		72
County commissioners may levy, when, 3969.....		79
Joint subdistricts, apportionment to, 3961.....		76
Toledo, how applied in, 3968.....		79
Contract.		
Board of education by, how made, 3974.....		87
Members of, shall have no interest in, 3974.....		87
Cleveland board of education by, 3899-19-3899-21.....		33
Library board, when invalid, 4002-9.....		107
County examiners may, for rent etc., 4075.....		176
School houses, how let, 3988.....		95
Toledo, manner of letting, 3899-37, 3899-38.....		40
Conveyance.		
Board of education, authorized to make, 3971.....		84
How made, 3974.....		87
Pupils may be conveyed, when, 3921-3921-8.....		55-58
Corporations. (See Articles of Incorporation.)		
Boards of education are, 3971.....		84
Educational institutions. (See Colleges and Universities) 3726-3771a..	213-229	
Ohio State University, 4105-10.....		193
School attendance, violations by agents of, 4022-11.....		152
Schools specially endowed, 4105-67.....		210
Costs.		
Joint subdistricts, costs in establishment of, 3943, 3945, 3950.....	66, 68	
Security for, 3935.....		64
Council.		
Cincinnati, powers of, as to university, 4095-4104.....	186-189	
Toledo, trusts for educational purposes, may accept, 4105.....		190
University of, powers of council as to, 4105.....		190
Vaccination of pupils, duty as to, 3986.....		92
County Auditor.		
Apportionment of school funds to all districts, 3964, 3966.....	77, 78	
Blank books to furnish to clerk of board of education, 4055.....		165
School examiners, 4075.....		176
Treasurer of school funds, 4055.....		165
Blanks, distribution of to school districts, 4058.....		167
Bonds of clerk and treasurer, copy to be filed with, 4043, 4050.....	161, 164	
Clerk of board failing to report, auditor may appoint other person, 4062.....		168
Compensation of auditor, 4064.....		169
Contingent fund, estimate for to be certified to, 3960, 3962.....	75, 77	
Distribution of funds to school treasurers, 3965.....		78
Enumeration, returns of to, 4035.....		158
Auditor to take, when, 4036.....		159
Return to, when county line divides original surveyed township, 4037.....		159

Index.

C

County Auditor—Concluded.

PAGE.

Return by, to state commissioner, 4039.....	160
Fines, collection of, for school purposes, duty as to, 3970.....	80
High school districts, certificate of, levy for, 4009-16.....	129
Joint subdistricts, apportionment of contingent fund to, 3961.....	76
Establishment of, copy of proceedings to be filed with, 3928.....	62
Where county line divides district 3962, 3963.....	77
Penalties for not making reports, 4061, 4063.....	168
Reports to, required, 4052, 4057, 4072.....	164, 167, 173
Reports of, required, 358, 4039, 4044, 4052, 4057, 4060.....	10, 160, 162, 164, 167, 168
School houses, duty as to tax levy for, 3992.....	98
Tax levy, estimate of, certified to, 3960.....	75
Teachers' institute, funds for, duties as to, 4087.....	182
Territory transferred, duties as to, 3893.....	16
Treasurer of school districts, settlement with etc., 4044, 4045, 4048.....	162, 163

County Board of Examiners.

Appointment of, 4069.....	171
Boxwell examinations, 4029-1.....	155
Commencements, county, 4029-2.....	155
Compensation of examiners, 4029-4.....	156
Branches of study required for teachers' certificates, 4074.....	175
Certificates, granting of, 4073.....	174
Revocation of, 4073.....	174
Clerk, duties of, 4070.....	172
Compensation of, 4070.....	172
Compensation of members, 4029-4, 4075.....	156, 176
Examination fee, 4071.....	172
Disposition of, 4072.....	173
Expenses of board, how paid, 4075.....	176
Ineligible, who are, 4069, 4085.....	171, 180
Majority of members necessary to take action, 4071.....	172
Meetings of, limited in number, 4071.....	172
Membership, limited, how, 4069, 4085.....	171, 180
Notice of meeting, what necessary, 4071.....	172
Organization of, 4070.....	172
Primary certificates, granting of, 4074.....	175
Qualifications necessary, 4069, 4085.....	171, 180
Record to be kept, 4070.....	172
Removals from board, 4069.....	171
Reports to be made, 4070, 4072.....	172, 173
Revocation of certificates, 4073.....	174
Scientific temperance, examination in, 4020-24.....	143
Special certificates, granting of, 4074.....	175
Teacher, qualifications necessary, 4074.....	175
Term of members, 4069.....	171
Uniform system of examinations, 4071a.....	173
Vacancies, how filled, 4069.....	171

County Commissioners.

Apportionment of funds to subdistricts may be appealed to, 3967.....	79
Bequests for educational purposes, may accept, 20-1 (footnote)....	181

C—D

Index.

County Commissioners — Concluded.

PAGE.

Board of education, commissioners may act as, when, 3969.....	79
Children's homes, schools at, duties as to, 4010.....	131
Contingent fund, when to levy, 3969.....	79
County auditor, compensation of, 4064.....	169
Joint subdistricts, levy of tax for school house in, when made by, 3941a	65
Territory transferred, approved of, by, 3893.....	16
Appeal to, when, 3893.....	16

County Treasurer.

Compensation of, 3960.....	75
School funds, duties as to state funds, 3956.....	71
When county line divides district, duties, 3963.....	77
Tax, collection of, 3960.....	75

Course of Study.

German taught, when, 4021.....	143
High school, township or joint township, in, 4009-18.....	130
Centralized townships, 3921-8.....	58
Physical culture, in certain schools, 4020-17.....	141
Physiology and hygiene, 4020-23.....	142
Scientific temperance, 4020-23.....	142
Text books, adoption of, 4020-14.....	139

D.

Dayton.

LIBRARY.

Library board, powers of, 4002-32.....	115
Election of, 4002-33.....	115
Non-partisan, 4002-33.....	115
Museum, may establish, 4002-38.....	117
Organization of, 4002-37.....	117
Powers and duties of, 4002-34-4002-37.....	115-117
Term of, 4002-33.....	115
Librarian and assistants, employment of, 4002-34.....	115
Tax levy, for library, how made, 4002-35, 4002-36.....	116

Deaf Children.

CINCINNATI AND CLEVELAND.

Car fare of, to be paid, 4009-7.....	127
Enumeration of, 4009-4.....	126
Funds for, state, 4009-5, 4009-6.....	126, 127
Laws governing schools, 4009-8.....	127
Report of schools, 4009-4.....	126
Schools for, establishment of, 4009-3.....	126

GENERAL.

Attendance of, compulsory, 4022-10.....	151
Funds for school, from county, 4009-11, 4009-12.....	127, 128
Inspection of schools, 4009-14.....	128
Report of schools, 4009-10.....	127
Schools for, authorized, 4009-9.....	127
Teachers for schools, 4009-13.....	128
Truant officer, duties as to, 4022-10.....	151

Index.

D—E

	PAGE.
Debt.	
Refunding of, issue of bonds, 2834a (footnote).....	98
Levy, 2834a (footnote).....	98
Resolution, 2834a (footnote).....	98
Deeds.	
Board. of education, deed by, 3971, 3974.....	84, 87
Ohio university land, leasehold estate, converted into fee simple, 4105-2-4105-4	192
Unpatented lands, deed of, made by trustees of Ohio State University, 4105-48	204
Degrees.	
Educational institutions, power to confer, 3726.....	213
Toledo University, may confer, 4102.....	189
University of Cincinnati, may confer, 4102.....	189
Devise.	
Common school fund of state, to, 3955.....	71
Endowed schools, to, management of, 4105-67.....	210
Institutions may receive, 3727.....	213
Ohio State University, for, 4105-15.....	194
Toledo public library, for, 4002-31.....	115
Directors. (See Subdistricts.)	
Appointment to fill vacancy, 3981.....	89
Form of	234
Contingent fund, apportionment of, director may appeal from, 3967..	79
Election of, 3916, 3917.....	52, 53
In new subdistricts, 3922.....	58
When special district is abandoned, 3927.....	60
Enumeration taken by, 4032.....	158
Joint subdistricts, how taken, 4034.....	158
Libraries in certain cities and villages, of, 4002-40.....	118
Oath of, 3979.....	88
Form of	236
Universities of Cincinnati and Toledo, of, 4098-4105.....	187-190
Vacancies, how filled, 3978, 3981.....	88, 89
Dismissal.	
Schools, on holidays, 4015.....	134
Teachers to attend institutes, 4091.....	182
Teacher, dismissal of, 4017.....	135
Improperly dismissed, may bring suit, 4019.....	137
Districts. (See City, Village, Special, Township, and Joint Subdistricts.)	
Donations. (See Bequests.)	
E.	
East Liverpool.	
Board of education, election of, 3898a.....	27
Education. (See Board of Education, Colleges, Schools.)	
Bequests, county commissioners may receive, for, 20-1 (footnote)....	181
Application of such fund, 20-1 (footnote).....	181
Compulsory, 4022-1-4022-14	145-153

E

Index.

Elections.	PAGE.
Bonds, issue of for school house, 3991.....	97
Centralization, bonds for, election, 3921-4.....	57
Centralization of township schools, for, 3921-2, 3921-3.....	56
Cincinnati, board of education, of, 3897-3903.....	20-45
City districts, board of education, election of, 3901, 3905, 3906, 3907..	44, 47
Attached territory, elections in, 3902.....	45
Membership of board increased, 3911.....	49
Notice of election, 3909.....	48
Returns of election, 3910.....	49
Cleveland, school council, of, 3899-2, 3899-3.....	28, 29
School director, 3899-6, 3899-7.....	30
East Liverpool, board of education, 3898a.....	27
Educational institutions, election of trustees and visitors, by alumni, 3747, 3749.....	218, 219
Forms relating to.....	231-233
High school, township or joint township, election on question, 4009-15	128
Union of districts in township for high school purposes, election for, 4009b.....	131
Lot, election decided by, when, 3978.....	88
Massillon, board of education, 3898.....	25
Portsmouth, board of education, 3898a(2).....	28
Special districts, in, 3924, 3925, 3927.....	59, 60
Abandonment of, election for, 3926.....	60
Tax to exceed maximum allowed by law, vote on, 3959.....	73, 74
Special tax, vote on, 3991.....	97
Teachers' institute, officers of, 4086.....	181
Tie vote, how decided, 3978.....	88
Toledo, board of education, 3899-25, 3899-26.....	37
Township districts, board of education, 3916, 3917.....	52, 53
Change of, to village district, 3894.....	17
New subdistrict, in, 3922.....	58
Village districts, board of education, 3908, 3909, 3910.....	48, 49
Membership increased, election for, 3911.....	49
Village may become village district, election on question, 3912.....	50
Board of education in, election of, 3913.....	50
Women can vote, when, 3970-10.....	84
Ballot box for, separate, 3970-11.....	84
Registration of, 3970-12.....	84
Electors.	
Attached territory in, where to vote, 3900.....	44
Conduct of election, 3902.....	45
Embezzlement.	
School officers, what constitutes, 6846 (footnote), 6975 (footnote)....	165, 87
Employee.	
Minor, proof of attendance at school required before employment, 4022-2	146
Between 14 and 16, must be able to read and write, 4022-3.....	147
In mines, when, 302 (footnote).....	147
School employee, accepting bribe for recommending text books, penalty, 6975a (footnote).....	135

Index.	E—F
Endowment Fund.	PAGE.
College, how application of, changed, 3732.....	214
Corporation for, 3750.....	219
Schools specially endowed, 4105-67-4105-73.....	210, 211
English Language.	
English grammar, teachers' certificate must contain, 4074.....	175
Youth who cannot read and write must attend school, 4022-3.....	147
Enumeration.	
Apportionment of state school funds by auditor of state, based on, 3956	71
By county auditor, 3964, 3966.....	77, 78
Clerk of board of education to make returns of, 4035.....	158
Compensation for taking, 4031.....	157
Deaf children of, in certain cities, 4009-4.....	126
Excessive, action of state school commissioner, 4040.....	160
Failure to take, penalty, 4038.....	159
By clerk of board to make returns, action taken, 4036.....	159
Joint high school district, funds for, 3929.....	63
Joint subdistricts, how taken in, 4034.....	158
Apportionment of school funds to, basis of, 3961.....	76
Funds apportioned, according to, 3929.....	63
Penalty for making fraudulent returns, 4041.....	160
Return of, in subdistricts, 4032.....	158
County auditor by, to state school commissioner, 4039.....	160
When county line divides original surveyed township, 4037.....	159
Youth of school age, includes whom, 4030.....	157
How taken, 4031.....	157
Evening School. (See Night School.)	
Examiner. (See City, County and State Examiners.)	
School funds, of, 365.....	12
Adverse report, disposition of, 366.....	13
Compensation of, 365.....	12
Execution.	
School property exempt from, 3973.....	86
Executive Committee.	
Teachers' institute, of, 4086.....	181
Bond of, 4087.....	182
Forfeiture of bond, 4089.....	182
Report of, 4088.....	182
Expenditures and Receipts.	
Board of education, clerk to make annual report of, 4052.....	164
Publication of report, 4053.....	165
Expulsion.	
Pupil from school, of, 4014.....	134
	F.
Fees. (See Compensation.)	
Female.	
Suffrage of, in school elections, 3970-10-3970-12.....	84

F

Index.

Fines.	PAGE.
School fund, to be paid into, 3970 (footnotes to).....	80
County auditor's duties as to, 3970.....	80
Fine Arts.	
Corporations for promoting, 3726-3771a.....	213-230
Flag.	
United States Flag, display of, 3986-1.....	92
Forms.	
Prepared by state commissioner of common schools, to be, 359, 360, 4058, 4060.....	10, 167, 168
1 Notice of election in school districts.....	231
2 Notice of election in new subdistrict.....	231
3 Poll book.....	231
4 Tally sheet.....	232
5 Minutes of subdistrict school meetings.....	233
6 Notice of meeting to vote tax for building purposes.....	233
7 Appointment of school director to fill vacancy.....	234
8 Different modes of altering subdistricts.....	234
9 Petition for joint subdistrict.....	234
10 Notice to members of board.....	235
11 Organization of joint subdistricts.....	235
12 Petition to probate judge.....	235
13 Remonstrance against joint subdistrict.....	236
14 Oath of school director.....	236
15 Notice of special meeting of township board.....	236
16 Teachers' contract.....	237
17 Certificate for teachers' pay.....	237
18 Order for teachers' pay.....	237
19 Dismissal of teacher.....	237
20 Order, other than for teachers' pay.....	238
21 Certificate of annual estimates.....	238
22 Certificate of annual estimates for joint subdistricts.....	239
23 Certificate of school funds in treasury.....	239
24 Transfer of territory.....	240
25 Lease to school district.....	240
26 Oath of clerk of township board.....	240
27 Township clerk's bond.....	241
28 Oath of clerk of board of education.....	241
29 Clerk's bond.....	242
30 Final receipt of township clerk.....	242
31 Oath of township treasurer.....	242
32 Township treasurer's bond.....	242
33 Oath of treasurer of board of education.....	243
34 Treasurer's bond.....	243
35 Final receipt of township treasurer.....	244
36 Complaint in regard to school funds.....	244
37 Compulsory education; notice to parent.....	244
38 Notice to truant.....	245
39 Notice of employers, of youth.....	245
40 Teachers' report.....	246
41 Report of truant officer.....	247
Traveling libraries.....	248, 249

Index.	F
Fourth of July.	PAGE.
Schools may be dismissed on, 4015.....	134
Funds.	
Accounts of, how kept, 3954.....	71
Auditor of state, duty of, 3954, 3955.....	71
Apportionment of state funds by auditor of state, 3956, 3957.....	71, 72
By county auditor, 3964, 3966.....	77, 78
By township board of education, 3967.....	79
Appropriation of, illegal, when, 2834b (footnote).....	85
Bequests to common school fund, how applied, 3955.....	71
Cleveland school fund, use for library, 4002-18.....	110
Contingent, estimate for by boards of education, 3958, 3960.....	72, 75
Apportionment of by township board, 3967.....	79
County commissioners to levy, when, 3969.....	79
Joint subdistricts, apportionment for, 3961, 3962.....	76, 77
Penalty for failure to levy, 3969.....	79
Deaf children, for schools for, 4009-5, 4009-6, 4009-11, 4009-12..	126, 127, 129
Debt of state, irreducible, common school fund shall constitute, 3954	71
Refunding of school debt, 2834a (footnote).....	98
Distribution of by county auditor, 3965.....	78
Educational institutions, of, 3732, 3750.....	214, 219
Embezzlement of, what constitutes, 6346 (footnote).....	165
Fines to be collected by county auditor and paid into funds, 3970....	80
Illegal loans by school officers, how recovered, 21 (footnote).....	161
Income from school lands, application of proceeds of, Art. 6, Sec. 1..	5
Investigation of, 364.....	11
Joint subdistricts, apportionment of contingent fund to, 3961.....	76
When county line divides district, 3962.....	77
How paid when territory is in two or more counties, 3963.....	77
Misappropriation of funds of, 3961a.....	76
Miami University fund, tax for, 3951a.....	70
Distribution of state funds to, 3951b.....	70
Ohio University fund, tax for, 3951a.....	70
Distribution of state funds to, 3951b.....	70
Ohio State University fund, tax for, 3951.....	69
Pension fund for teachers	
In Cincinnati, 3897b-3897i.....	22-25
In Cleveland, 3899a-3899p.....	35-37
In Toledo, 3899-40-3899-46.....	41-44
Public lands, proceeds of sale of, 3953, 3954.....	70, 71
Salt and swamp lands, proceeds of sale of, 3952.....	70
School fund, preservation of, Art. 6, Sec. 1.....	5
Settlement between district treasurer and auditor, 4044.....	162
State common school fund, tax for, 3951.....	69
State commissioner of common schools, duty as to, 358, 366.....	10, 13
Taxation, constitutional provisions for, Art. 6, Sec. 2.....	5
Tax levy, maximum for schools, 3959.....	73, 74
Township districts, apportionment of, to subdistricts, 3967.....	79
May be appealed to county commissioners, 3967.....	79
Treasurer of county, duties as to, 3956, 3957, 3960, 3963, 3965, 3966	71, 72, 75, 77, 78

F—G—H

Index.

Funds—Concluded.	PAGE.
Treasurer of district, receipts and disbursements by, 3960, 4047.....	75, 163
Amount he may have on hand, 4048.....	163
Village and special districts, when created, to receive a portion of township funds, 3946a.....	67
G.	
General Assembly.	
Laws to encourage schools, duty of, to pass, Art. 1, Sec. 7:.....	5.
Ohio State University, report to, 4105-53.....	206
State commissioner of common schools to report to, 361.....	11
School funds, to provide for by taxation, Art. 6, Sec. 2.....	5
School laws can take effect upon authority other than, Art. 2, Sec. 26.	5
Special districts, created by act of, 3891.....	16.
Subdistricts created by, not to be changed, unless, 3921.....	55
Tax for schools, shall levy, 3951.....	69
Wilberforce University, members may name pupils for admission to, 4105-64	208
German Language.	
Teaching of authorized, when required, 4021.....	143.
Girl's Industrial Home.	
Juvenile disorderly person, commitment of, to, 4022-8.....	150
Notice to board of county visitors before commitment, 4022-11...	152
Governor.	
College, fills vacancy among trustees, 3733.....	214
Military academy, is visitor of, 3758.....	223.
Ohio State University, appointment of trustees, 4105-37.....	202
Deed for lands of, to execute and deliver, when, 4105-2.....	192
School book commission, is a member of, 4020-11.....	138
State commissioner of common schools, to fill vacancy in office of, 354	9.
Report of, to be made to, when, 361.....	11
Wilberforce University, appointment of trustees, 4105-55.....	206
Guardian.	
Children under care of, entitled to attend schools free, 4013.....	133
Duties of, under compulsory education law, 4022-1-4022-14, 4027...	145-153, 154
H.	
Hamilton County.	
Boards of education in village and special districts, in, election of, 3904-1	46
Cincinnati library, residents of, to have access to, 3999a.....	103
Tax levy, maximum, outside of Cincinnati, 3959.....	73, 74
Hazing.	
Colleges and public schools, unlawful in, 6819-1 (footnote).....	14
High Schools.	
Boards of education may establish, 4009.....	125.
Examinations in special and subdistricts, for, 4029-1.....	155.
Commencements, 4029-2.....	155.

Index.

H—I

High Schools — Concluded.

PAGE.

Compensation of examiners, 4029-4..... 156

Tuition, 4029-1, 4029-3..... 155

Joint township high school established by agreement, 3928..... 62

Control of, 3929..... 63

Supported, how, 3929..... 63

Established by petition, 4009-15-4009-20..... 128-130

TOWNSHIP DISTRICTS IN.

Admission of pupils to, 4009-1..... 125

Board of education may establish, 4009..... 125

Centralized townships, in, 3921-8..... 58

Management and control of, 4009-1..... 125

Tax levy for, 4009-2..... 126

Time, length of, to be continued, 4009-1..... 125

Township and joint township high schools, established by petition, 4009-15..... 128

Buildings, purchase or renting of, 4009-17..... 130

Election on question of establishment and tax levy for, 4009-15..... 128

Election for tax levy not necessary, when, 4009-17..... 130

Laws governing such schools, 4009-20..... 130

Studies to be taught in, 4009-18..... 130

Tax for, 4009-15, 4009-16..... 128, 129

Teachers, employment of, 4009-18..... 130

Union of several districts within township for high schools purposes, 4009a..... 131

Board of education for such district, 4009b..... 131

Election on question, 4009b..... 131

Holidays.

Dismissal of schools on, without forfeiture of teachers' pay, 4015..... 134

Holidays named, 4015..... 134

Howe's Historical Collections of Ohio.

Boards of education authorized to purchase, 4020-15..... 141

Care of, how taken, 4020-15..... 141

I.**Industrial School. (See Boy's Industrial School.)**

Industrial training school, 3767, 3768..... 227, 228

Wilberforce University, industrial department of, 4105-54-4105-66.... 206-208

Infirmiry.

Corpse, surrender of, to medical college, 3763..... 226

Schools at, 4010..... 131

Institutes. (See Teacher's Institutes.)**Interest.**

Irreducible school funds, interest on, 3952, 3954..... 70, 71

Investigation

School funds, of, by accountant, 364..... 11

Teacher, of, by board of examiners, 4073, 4081..... 174, 178

Irreducible School Fund.

Accounts of, how kept, 3954..... 71

I—J—K—L

Index.

Irreducible School Funds—Concluded.

PAGE.

Original surveyed township, in two counties, how proceeds paid to, 3957.....	72
Public lands, sale of, proceeds of, how applied, 3953, 3954.....	70, 71
Salt and swamp lands, proceeds of sale of, 3952.....	70

J.

Janitor.

Board of education, power to employ, 4017.....	135
Board of examiners may employ, 4075.....	176
Dismissal of by board of education, 4017.....	135
Term of employment, 4017.....	135

Joint Subdistricts.

Apportionment of contingent fund of, 3961.....	76
Action when error has occurred, 3961.....	76
When county line divides district, 3962, 3963.....	77
Director of, member of what board, 3929.....	63
Dissolution of, proceedings, 3950.....	68
Enumeration, how taken in, 4034.....	158
Established by agreement, how, 3928.....	62
By petition, how, 3930-3945.....	63-66
Remonstrance against, 3934, 3948.....	64, 67
Forms relating to.....	234-236
Negligence of board, action against, for, 3961a.....	76
Schools, control of by what board, 3929.....	63
Supported, how, 3929.....	63
School house, erection of, 3989.....	96
Change of site, 3989.....	96
Transfer of property, 3989.....	96
Teacher's certificate, valid in, 4073.....	174
Territory transferred, map and statement required, 3893.....	16

Judge. (Sec Common Pleas Court.)

Juvenile Disorderly Person.

Definition of, 4022-4.....	148
Proceedings against, 4022-8.....	150

K.

Kindergarten Schools.

Admission to, certain ages, 3958a.....	73
Establishment of, 3958a.....	73
Tax levy, additional for, provided, 3958a.....	73

L.

Language. (See English Language, German Language.)

Foreign, teaching of in the public schools, 4021.....	143
---	-----

Laws.

Encouragement of schools, for, passage of, Art. 1, Sec. 7.....	5
Interpretation of, decisions, preparation and distribution of, 360....	10
Schools, for, can take effect upon approval of authority other than the general assembly, Art. 2, Sec. 26.....	5

I,	Index.	
Law College.		PAGE.
Organization of, 3767, 3768.....		227, 228
Law Library.		
Organization of, 3767, 3768.....		227, 228
Law School.		
Ohio State University, of, 4105-29.....		200
Lease.		
Form of.....		240
School lands of, granted by the government, 1403-1440 (footnote)....		86
Site for school house or right of way, lease of, 3987.....		94
Legal Adviser.		
Boards of education, who is, of, 3977.....		87
Ohio State University, who is, of, 4105-17.....		195
Legislature. (See General Assembly.)		
Library.		
Access to, 3998, 4002-42.....		102, 119
Appropriation of money for, amount limited, 3995.....		101
Board of directors, appointment of, 4002-40.....		118
Duties of, 4002-41.....		119
Organization of, 4002-41.....		119
Powers of, 4002-41.....		119
Report of, 4002-43.....		119
Term of, 4002-40.....		118
Vacancy in, how filled, 4002-40.....		118
Cincinnati library. (See Cincinnati.)		
City districts, certain size, may establish, 4002-39.....		118
Fourth class, second grade, in, 4002-46.....		120
Report of, to board of education, 4002-48.....		120
Tax for, 4002-46-4002-49.....		120, 121
Cleveland library. (See Cleveland.)		
Control of, vested in board of education, when, 3995.....		101
Dayton library. (See Dayton.)		
Donations, board may accept, 4002-44.....		120
Established, how, 3995, 3999, 4002-39.....		101, 102, 118
Librarian, appointment, compensation of, 3998, 4002-41.....		102, 119
Managers for certain cities, 3999.....		102
Portsmouth library. (See Portsmouth.)		
Pre-existing library, how affected, 4002-45.....		120
Rules and regulations, for, 3995, 3998, 4002-41.....		101, 102, 119
Tax levy, for, 3996, 4002-45, 4002-46.....		102, 120
How expended, 3997.....		102
Toledo library. (See Toledo.)		
Traveling libraries		248, 249
Village districts, may establish, 4002-39.....		118
Location.		
Ohio State University, 4105-18.....		195
School house, convenience of, 4007.....		124
Lot.		
Election decided by, when, 3978.....		88

M	Index.	
	M.	
Manual Training.		PAGE.
Cleveland, schools in, 3899-5.....		30
Tax levy for, 4020-18-4020-20.....		141, 142
Columbus, tax levy for, bonds, 4020-21-4020-22.....		142
Map.		
Attached territory, to city district, to be made, 3900.....		44
Territory, transferred from one district to another, map of, 3893....		16
Township district, map of, required, 3921.....		55
Massillon.		
Board of education, how constituted, 3898.....		25
Mechanics Institute.		
Authority to borrow money, issue bonds, etc., 3763-1.....		228
Directors and trustees not personally liable for debts, 3763-1.....		228
Objects of institute, enlarged, how, 3768.....		228
Organic rules which may be prescribed in articles of incorporation, 3767		227
Medical College. (See Colleges.)		
Bodies for dissection, may receive, 3763.....		226
Meetings.		
Board of education, city districts, 3903.....		45
Township districts, 3920.....		55
Board of examiners, city and village, how often, 4080.....		178
County board, number of, limited, 4071.....		172
Board of subdirectors, 3918.....		54
Contracts must be made at regular or special meeting, 3974.....		87
Illegal, when, 3984.....		90
Ohio State University, trustees of, 4105-41.....		203
Special meetings, how called, 3920.....		55
Text books, adoption of, must be at regular meeting, 4020-14.....		139
Wilberforce University, trustees of, 4105-59.....		207
Memorial Day.		
Schools may be dismissed without forfeiture of teacher's pay, 4015....		134
Miami University.		
Admission of pupils to, 3951a.....		70
Distribution of funds for, 3951b.....		70
Tax levy, for, 3951a.....		70
Military Academy. (See Academy.)		
Minor.		
Attendance at school of, when unable to read and write, 4022-3....		147
Commitment to reformatory of, proceedings, 4022-8, 4022-9, 4022-11		150-152
Employment of, between certain ages, when schools are in session, unlawful, 4022-2, 6986-7 (footnote), 302 (footnote).....		146, 147
Money. (See Funds.)		
Month.		
School month, length of, 4016.....		134
Museum.		
Association, rules for organization of, 3767, 3768.....		227, 228
Dayton library board, may establish, 4002-38.....		117

Index.	M—N
Music.	PAGE.
Boards of education may employ teachers, in, 4017a.....	136
May purchase books and appliances, 4017a.....	136
Special certificates in, may be granted, 4074.....	175
N.	
Narcotics. (See Scientific Temperance.)	
Natural History Society.	
Regulations as to, 3767, 3768.....	227, 228
New Year's Day.	
Schools may be dismissed without forfeiture of teacher's pay, 4015..	134
Night Schools.	
Attendance at required, when, 4022-3.....	147
Equivalent to what, at day school, 4029.....	154
Provisions for, 4012, 4012a.....	133
Non-Resident.	
Attendance at school, of, when permitted, conditions, 4013.....	133
By agreement of boards, 4022.....	144
When one and one-half mile from school house, 4022a.....	144
Boxwell graduates, privileges of, 4029-1-4029-4.....	155, 156
Normal Schools.	
Scientific temperance, instruction in, at, 4020-24.....	143
Penalty for failure to instruct, 4020-25.....	143
Wilberforce University, normal department at, 4105-54-4105-66.....	206-208
Notice.	
Attendance at nearest school, notice to board not necessary, 4022a....	144
Board of education, meetings of, 3920.....	55
EDUCATIONAL INSTITUTIONS.	
Meeting of stockholders, notice of, 3754.....	222
Purposes, name, etc., notice of intended change, 3762a.....	224
ELECTION, NOTICE OF, FOR.	
Bonds issue, 3991.....	97
City districts, second class, board of education, 3909.....	48
Membership of board increased, in city and village districts, 3911.	49
High schools, township and joint township, 4009-15.....	128
Union of districts for high school purposes, 4009b.....	131
Special districts, what necessary, 3925.....	59
Abandonment of, 3926.....	60
Tax levy, election for, 3991.....	97
Township districts, 3917.....	53
To become village districts, 3894.....	17
Subdistricts, new, election in, 3922.....	58
Village districts, 3909.....	48
Village to become village district, 3912.....	50
First election in, 3913.....	50
Joint subdistricts, established, notice to boards, 3933.....	63
Meeting of commissioners to consider petition for, 3937.....	64
Meetings of boards of subdirectors, 3918.....	54
Teachers' notice of examination, 4071, 4080.....	172, 178
Text books, publishers of, to, 4020-11.....	138

N—O

Index.

Notice—Concluded.

PAGE.

Boards of education, to, 4020-12.....	139
Truancy, notice to parent, 4022-7.....	149

O.

Oath.

Board of education, members and clerk, of, 3979.....	88
Clerk of board of education, 3979, 4035.....	88, 158
Cleveland library, board, of members, 4002-6.....	107
Commissioners to establish joint subdistricts, of, 3939.....	65
County auditor may administer, when, 4036.....	159
Director may administer, 3917.....	53
Election officers in townships, 3917.....	53
Enumerator, of, 4031.....	157
Forms relating to.....	236, 240-244
School officers, of, 3979.....	88
Schools specially endowed, trustees of, 4105-70.....	211
Special examiner of teachers, 4078.....	177
State commissioner of common schools, of, 355.....	9

Office. (See various officers, by name.)

State commissioner of common schools can not hold, other, 356.....	10
--	----

Officer. (See various officers, by name.)

Board of education, of, selection of, 3980.....	88
Charges against, investigation of, 364-366.....	11-13
Embezzlement by, what constitutes, 6846, (footnote).....	165
Oath of school officers, 3979.....	88
Text books, recommendation of for a consideration by, penalty, 6975a (footnote).....	135

Ohio State University.

Analysis of minerals, by professor of, 4105-27.....	199
Appropriations for apparatus, equipment, etc., 4105-28.....	200
Attorney general legal adviser of board of trustees, of, 4105-17.....	195

BOARD OF TRUSTEES.

Faculty, compensation of, to fix, 4105-44.....	204
Further duties of board, 4105-11, 4105-40.....	193, 202
Grants and devises of land may be received by, 4105-15.....	194
Management and control of, to be vested in, 4105-13.....	194
Powers and duties of, 4105-39.....	202
Provide for lectures, board may, 4105-12.....	194
Branches taught at, 4105-45.....	204
Ceramics, department of, 4105-30-4105-34.....	200, 201
Law department of, 4105-29.....	200
Certain acts repealed, 4105-25.....	199
Clay working and ceramics, course in, 4105-30.....	200
Established, name of, 4105-9.....	193
Fund of, 3951.....	69
Irreducible debt of state, part of, 4105-43.....	203
Interest on fund of agricultural college, invested, how, 4105-46, 4105-47	204
Laboratory apparatus, models, and machinery, to be provided 4105-26	199

Index.

O

Ohio State University—Concluded.

LANDS.

PAGE.

Accepted by state from United States, 4105-19.....	195
Board may sue for lumber cut off such lands, 4105-20.....	196
Compensation and proceedings of appraisers, 4105-22.....	197
Deeds, how made and executed, 4105-23.....	198
Occupant may purchase additional land, 4105-21.....	196
Occupant claiming exemption to comply with law of congress, 4105-21	196
Payments, how made and secured, 4105-23.....	198
Record of contract to be made and kept, 4105-23.....	198
Sale of, public or private, 4105-23.....	198
Proceeds of sale, disposition of, 4105-24.....	199
Survey to be made by trustees, 4105-21.....	196
Title to, vested in trustees, 4105-21.....	196
Tracts to be numbered and appraised, 4105-22.....	197
Trustees to sell other lands, 4105-21.....	196
Unsold land to be divided into tracts, 4105-22.....	197
Law school, provisions for, 4105-29.....	200
Location of college, etc., 4105-18.....	195
Meetings of board, 4105-41.....	203
Mines, school of, 4105-26-4105-28.....	199, 200
Named "The Ohio State University" 4105-36.....	202
Objects of college, 4105-9.....	193
Officers of board, their duties, etc., 4105-14.....	194
Professors employed to teach, 4105-27.....	199
Pupils, who may be admitted as, 4105-12.....	194
Report of trustees, 4105-42.....	203
Residence for faculty may be erected by trustees, 4105-24.....	199
Style and powers of board of trustees, 4105-10.....	193
Tax levy for, 3951.....	69
Terms of office of trustees, compensation and vacancies, 4105-38....	202
Title of lands to vest in the state, 4105-16.....	194
Trustees authorized to make certain deeds, 4105-48.....	204
Virginia military lands, relief of buyers, 4105-50.....	205
Written analysis of fertilizers to be furnished, how, 4105-35.....	202

Ohio University.

Admission of pupils, 3951a.....	70
Distribution of fund, 3951b.....	70
Sale of certain lands, 4105-1.....	191
Deed for, 4105-2-4105-4.....	192
Proceeds of, 4105-5.....	192
Tax on lands donated to, 4105-6-4105-8.....	192, 193
Tax for, 3951a.....	70

Order.

Teacher's' pay, for, illegal, when, 4051.....	164
Township order for teachers' pay, how drawn, 4018.....	136
Treasurer, order on, how drawn, 4047.....	163
Must produce order for all disbursements, 4044.....	162

Orphan Asylum.

Schools at, provisions for, 4010.....	131
---------------------------------------	-----

O—P

Index.

Original Surveyed Township.

PAGE.

Apportionment of funds, when county line divides, 3966.....	78
Funds how paid in such cases, 3957.....	72
Enumeration, when divided by county line, 4037.....	159

P.

Parent.

Duty of, to send minor children to school, etc., 4022-1.....	145
Violation of act relating to, 4022-3, 4027.....	147, 154

Penalty.

Board of education, for failure to levy contingent fund, 3969.....	79
Member of, voting for relative for teacher, 6975a (footnote)....	135
Clerk of board of education, for failure to make report, 4061.....	168
Coporation, unlawful employment of minors, 4022-2, 4022-3, 4022-11 4022-12	146, 147, 152, 153
Corpse, detention of, 3763.....	226
County auditor, failure to make statistical report, 4060, 4061.....	168
For failure to make enumeration return, 4063.....	168
Disturbing meetings, 6896 (footnote).....	86
Enumeration return, fraudulent, 4041.....	160
Fines to be paid into school fund, 3970 (footnotes to).....	80
Parent or guardian, liable, when, 4022-7, 4022-11, 4022-12...	149, 152, 153
Property, damage of, 6831, 6835, 6836, 6837, 6877 (footnote).....	86
School officers, non-enforcement of compulsory education law, 4022- 11	152
Teachers' institute, executive committee, failure of, to report, 4088..	182
Text books, offering bribe for adopting of, 6975a (footnote).....	135
For accepting bribe by school employee, 6975a (footnote).....	135

Pension Fund.

CINCINNATI.

Custodian of fund, who is, 3897g	25
Establishment of, 3897b.....	22
Fund provided for, 3897f.....	24
Management of, 3897c.....	22
Principal and income of, may be used, 3897e.....	24
Rebate on resignation or death, 3897h.....	25
Retirement and pension of teachers, 3897d.....	23
Rules and regulations for, 3897i.....	25
"Teacher" defined, 3897d.....	23
Trustees of, 3897c.....	22

CLEVELAND.

Bond of trustees, 3899h.....	36
Compensation of trustees, 3899g.....	36
Death or resignation of teachers, 3899p.....	37
Disability, amount of pension, 3899m.....	36
Establishment of, 3899a, 3899b.....	35
Income of, 3899d.....	35
Legacies, bequests, donations, 3899e.....	35
Officers of board, 3899g.....	36
Payment of pensions, when, 3899k.....	36
Rebate on removal or non-appointment, 3899n.....	36

Index.

P

Pension Fund—Concluded.

	PAGE.
Retirement of teachers, pension allowed, 3899c, 3899l.....	35, 36
Involuntary, rules as to, 3899o.....	37
Retiring board, membership, 3899f.....	35
Powers of, 3899i.....	36
Trustees of, 3899h.....	36

TOLEDO.

Bond of treasurer, 3899-45.....	43
City treasurer, treasurer of fund, 3899-45.....	43
Clerk of board of education, duties of, 3899-44.....	43
Death or resignation of teachers, 3899-46.....	44
Establishment of, 3899-40.....	41
Income of, 3899-40.....	41
Retirement of teacher, pension allowed, 3899-42.....	42
Trustees, 3899-41.....	42
Power of, over fund, 3899-43.....	43

Personal Property. (See Property.)**Petition.**

Centralization of township schools, for, 3921-2.....	56
Evening schools, for, 4012.....	133
Forms relating to.....	231, 235
German language, teaching of, 4021.....	143
High school, township, 4009-15.....	128
Joint subdistricts, creation of, 3931-3934.....	63, 64
Special district, creation of, 3946.....	66
Change of boundary of, 3946, 3948.....	66, 67
Subdistricts, additional, for, 3946.....	66
Township district to village district, change of, 3894....	17
Village districts, change of boundaries of, 3946, 3948.....	66, 67
Township districts, changed to, 3894.....	17

Physical Culture.

Instruction in, required, where, 4020-17.....	141
---	-----

Plat.

School district, plat of, 3900, 3907, 3921, 3940.....	44, 47, 55, 65
Property to be appropriated for school purposes, plat of, 3990.....	97

Portsmouth.

Board of education, how constituted in, 3898a (2).....	28
Libraries, consolidation of, 4003.....	121
Library committee, election of, 4004.....	121
Powers and duties of, 4005, 4006.....	121
Vacancies in, how filled, 4004.....	121

President.

Board of education, of, election, 3980.....	88
Absence of at meeting, who acts, 3983.....	90
Order on treasurer, must sign, 4047.....	163
Record of proceedings, must sign, 3984.....	90
City board of examiners, of, election, 4079.....	178
Clerk of board of education, bond of, to be filed with, 4050.....	164
County board of examiners, election of, 4070.....	172
Educational institutions, of, 3728.....	213

P	Index.	
President—Concluded.		PAGE.
Libraries in certain cities, member of board, is, 3999.....		102
Process on board of education, served on, 3976.....		87
Teachers' institute, of, election, 4086.....		181
Township board of education, of, must attend March meeting of township trustees, 1458 (footnote).....		89
Private Schools. (See Colleges and Universities.)		
Report of, required, 363.....		11
Specially endowed, trustees for, 4105-67.....		210
Accounts of trustees, 4105-71.....		211
Bond of trustees, 4105-70.....		211
Duties of trustees, 4105-69.....		210
Oath of trustees, 4105-70.....		211
Vacancies, how filled, 4105-68.....		210
Visitors of, 4105-72.....		211
Probate Judge.		
Appropriation of property for school purposes, jurisdiction of, 3990..		97
Compulsory education law, jurisdiction of, under, 4022-7, 4022-8-4022-11	149, 150-152	
County examiners, appointment of, by, 4069.....		171
Report of appointment, 4069.....		171
Revocation of appointment, 4069.....		171
Deaf children, report of, to be returned to, 4022-10.....		151
Joint subdistricts, petition for creation of, when filed with, 3934, 3948	64, 67	
Appointment of commissioners, 3938.....		64
Costs, how paid, 3945.....		66
Dissolution of, by, proceeding, 3950.....		68
Judgment in favor of establishment of, entry, 3944.....		66
Judgment for costs, fees, 3943.....		66
Oath and duties of commissioners, 3939.....		65
Publication of notice, 3937.....		64
Report of commissioners, effect of, 3941, 3942.....	65, 66	
Security for costs, 3935.....		64
Time and place of meeting of commissioners, 3936.....		64
Special districts, petition for creation of, when filed with, 3948.....		67
Change of boundary, of, 3948.....		67
Subdistricts, petition for creation of, when filed with, 3948.....		67
Change of boundary, of, 3948.....		67
Village districts, petition for change of boundary, when filed with, 3948		67
Process.		
Service of, on boards of education, 3976.....		87
Professors.		
Educational institutions, appointment of, for, 3726.....		213
Faculty, professors are members of, 3728.....		213
Powers of, 3728.....		213
Military academies, professors are members of board, 3757.....		223
Ohio State University, employment and dismissal of, at, 4105-11..		193
Ceramics, department of, instructor in, 4105-33.....		201

Index.

P—Q—R

Professors—Concluded.

PAGE.

Chemistry, analysis of fertilizers to be furnished by professor, in,
4105-35 202

Compensation of, how fixed, 4105-44..... 204

Mines and mine engineering, instructor in department of, 4105-26,
4105-27 199

Residences may be erected for faculty, 4105-24..... 199

University of Cincinnati and Toledo, 4099..... 188

Property.

School property, how sold or exchanged, 3971..... 84

Exempt from taxation or execution, 3973..... 86

Title to, in whom vested, 3972..... 86

Prosecuting Attorney.

Board of education, legal adviser of, 3977..... 87

Compensation of, 3977..... 87

Shall not be a member of board, 3977..... 87

Funds, fraudulent use of, duty as to report of examiner of, 366..... 13

Teachers' institute, duties as to, 4089..... 182

Public Library. (See Library.)

Publication.

Board of education, sale of property by, 3971..... 84

Building and repairing, bids for, 3988..... 95

Receipts and expenditures, by clerk of, 4053..... 165

City board of examiners, meetings of, 4080..... 178

County board of examiners, meetings of, 4071..... 172

Election notice, in city and village districts, 3909..... 48

Joint subdistricts, meeting of commissioners to consider petition for,
3937 64

Publishers.

Text book law, requirements of, 4020-10-4020-14..... 133, 139

Pupils.

Assignment of by board of education, 4013..... 133

Expulsion of, 4014..... 134

Suspension of, 4014..... 134

Tuition of, may be paid by agreement between boards, 4022..... 144

Q.

Qualifications.

Teachers in common schools, 4074..... 175

In city and village districts, 4078, 4084..... 177, 180

Quorum.

Board of education, of, what constitutes, 3982..... 90

Business that a majority of a quorum cannot transact, 3982..... 90

Educational institutions, what constitutes, 3745..... 218

R.

Real Property. (See Property.)

Receipts and Expenditures.

Board of education, clerk of to prepare and forward to county auditor,
4052, 4057 164, 167

Publication of, 4053..... 165

R	Index.	
Record.		PAGE.
Board of education, how kept, 3984.....		90
Approval of, 3984.....		90
Public record, is, 3984.....		90
Bonds, record of issue, 3993.....		99
Educational institutions, of, 3762a.....		224
Joint subdistricts, record of proceedings to establish, 3928.....		62
References.		
To abbreviations of authorities cited.....		4
Relatives.		
Board of education, members of, cannot vote for relatives for teacher, 6975a (footnote).....		135
Relief.		
Board of education may afford to needy children, 4022-9.....		151
Religion.		
School funds, religious sect shall have no control of, Art. 6, Sec. 2..		5
Reports.		
Board of education, financial and statistical, 4052, 4057, 4058.....	164,	167
Deaf children, report of schools for, 4009-10.....		127
City and village board of examiners, to state school commissioner, 4083		179
Appointment of, report, 4077.....		177
City districts, first class, publication of reports, 4059.....		167
Cleveland, director of accounts, of, 3899-16.....		32
Library board of, report, 4002-8.....		107
Clerk of board of education, of, 4052, 4057, 4058.....	164,	167
Enumeration, report of, to auditor, 4035.....		158
Failure to make, other person to be appointed, 4060.....		168
Financial, publication of, 4053.....		165
Penalty for failure to make, 4061, 4062.....		168
Teachers' report to be filed with, before order is drawn for pay of, 4051		164
Colleges, report of, 363.....		11
Copies of all reports may be required by the state commissioner, 358		10
County auditor, to state commissioner, 4060.....		168
Enumeration returned by, to state commissioner, 4039.....		160
Penalty for not making, or for making fraudulent reports, 4041, 4061, 4063.....		160, 168
Report of clerk to, failure to make, auditor may appoint other person, 4062		168
County board of examiners, clerk of, to make, 4070, 4072, 4076.....	172, 173,	176
Dayton public library board, to report to board of education, 4002-38		117
Deaf children, enumeration of, in Cincinnati and Cleveland, 4009-4..		126
Report of schools for, 4009-10.....		127
Enumeration return by clerk to auditor, 4035.....		158
County auditor to state commissioner, 4039.....		160
Original surveyed township, by auditor, 4037.....		159
Examiner of school funds, report of, 365.....		12
Libraries in certain cities and villages, report of, 4002-43.....		119
Ohio State University, report of teachers, 4105-42.....		203

Index.

R—S

Reports — Concluded.

PAGE.

Board of claims, report of, 4105-53.....	206
Portsmouth, library committee, report of, 4005.....	121
Private schools, report required, 363.....	11
Probate judge, appointment of school examiners, 4069.....	171
State commissioner of common schools, report of, 361, 362.....	11
Superintendent of schools of, 4059.....	167
Teachers, report of, 4022-6, 4059.....	149, 167
Report must be filed with clerk before order is drawn for pay of, 4051	164
Toledo, superintendent to make, 3899-30.....	38
Business Manager to make 3899-32.....	39
Library, report as to, 4002-29.....	114
Treasurer of board of education, to auditor, 4044.....	162
Truant officer, reports of, 4022-5, 4022-9, 4022-10.....	148, 151
Penalty for failure to make, 4022-11.....	152
Visitors to certain endowed schools, to report, 4105-72.....	211
Wilberforce University, report of trustees, 4105-63.....	208

Representative. (See General Assembly.)**Returns. (See Elections, Reports.)****Revocation. (See Certificate.)****Rules and Regulations.**

Board of education, city districts, 3903.....	45
Applicable to all boards, 3985.....	91
Cincinnati, teachers' pension fund, 3897i.....	25
County board of examiners, for, 4070.....	172
Libraries, made by board of education, for, 3998.....	102
Cincinnati library, for, 3999a.....	103
City and village districts, for, 4002-41.....	119
Cleveland library, for, 4002-10.....	108
Portsmouth library, for, 4005.....	121
Toledo library, for, 4002-28.....	114
Vaccination, rules for, 3986.....	92

S.**Sale.**

Board of education, sale of property by, 3971.....	84
Apparatus, sale of, to, limited, 3995.....	101
Books for library, 3995.....	101
Text books, sale of, 4020-10-4020-14.....	138, 139

Salt and Swamp Lands.

Proceeds of sale of, how applied, 3952.....	70
---	----

Salaries. (See Compensation.)

May be increased but not diminished, 4017.....	135
--	-----

Scholarships.

Stock of colleges, etc., may be changed into, 3730.....	213
---	-----

Schools.

Admission of non-residents, by agreement of boards, 4022.....	144
Children's homes, school at, 4010.....	131

S Index.

Schools — Concluded.	PAGE.
Closing of, on holidays, 4015.....	134
During epidemic, 2135 (footnote).....	92
During session of teachers' institute, 4091.....	182
Continued, must be, how long, 4007.....	124
Conveyance of pupils, to, 3921-3921-8.....	55-58
Deaf children, schools for, 4009-3-4009-14.....	126-128
Dismissal of, on holidays, 4015.....	134
Teachers, to attend institute, 4091.....	182
Embezzlement of officers of, 6846 (footnote).....	165
Employing relatives of board of education, in, 6975a (footnote).....	135
Examination of schools, by city and village boards of examiners, 4078	177
Evening schools, 4012, 4012a.....	133
Free to whom, 4013.....	133
German language, in, 4021.....	143
Graduating examinations for high school attendance, 4029-1.....	155
Hazing made penal, 6819-1 (footnote).....	14
High schools, authorized, 3921-8, 3928, 3929, 4009-4009-2, 4009-15-4009-20	58, 62, 63, 125, 126, 128, 130
Infirmity, schools at, 4010.....	131
Janitor of, 4017.....	135
Number of, required, 4007.....	124
Orphans' asylum, schools at, 4010.....	131
Physical culture in, 4020-17.....	141
Private schools, report of, 363.....	11
Pupils, admission of, etc., 4013.....	133
Attendance enforced, 4022-1.....	145
Non-resident, attendance of, 4013, 4022, 4022a.....	133, 144
Scientific temperance instruction, in, 4020-23.....	142
State commissioner of common schools, as to, 354-366.....	9-13
Studies, 4009-18, 4021.....	130, 143
Subdistricts, discontinued, when, 4009-19.....	130
Suspension of, in, 3921.....	55
Text books, in, 4020-10-4020-14.....	138, 139
Zanesville charity school. 4011.....	132
School Books. (See Text Books.)	
School Book Commission.	
Membership of, 4020-11.....	138
Price of text books, maximum, fixed by, 4020-11.....	138
Publishers, failure to furnish books, action by commission, 4020-13..	139
School Districts. (See City, Village, Special, Township and Joint Subdistricts.)	
Classification of, 3885.....	14
Territory, transfer of, 3893.....	16.
School Funds. (See Funds.)	
School Houses.	
Advertising by board of education for bids for building, etc., 3988....	95
Anticipation of levy for, 3993, 3994.....	99, 100
Appropriation of land for, 3990.....	97
Boards of education, to provide, 3987.....	94
Directions for bidding for and letting contracts, 3988.....	95

Index.

S

School Houses—Concluded.

PAGE.

Bonds in anticipation of levy for, 3993.....	99
City districts, first class, exceptions, etc., 3994.....	100
Breaking into at night, to steal or commit felony, 6835 (footnote)...	86
In day time, to steal, 6837 (footnote).....	86
Building, repairing etc., 3987.....	94
Burning, maliciously, 6831 (footnote).....	86
Contracts, directions for bidding and letting, 3988.....	95
Entertainments, use of school house for, 3987-1.....	94
Escape from, failure to provide means of, 7010 (footnote).....	94
Exchange of lots for schools, 2675-1-2675-4 (footnote).....	94
Exempt from taxation and execution, 3973.....	86
Flag, display of, 3986-1.....	92
Injuring or committing nuisance upon, 6877 (footnote).....	86
Inspection of, by board of health, 2135 (footnote).....	92
As to safety of, 2568-2572a (footnote).....	94
Joint subdistricts, school house, in, 3928, 3941a, 3989.....	62, 65, 96
Maliciously entering, to commit a felony, penalty, 6836 (footnote)...	86
Manual training schools, for, 4020-18-4020-22.....	141, 142
Sale of, when location changed, 3989.....	96
Site, designation of, 3928, 3941, 3941a.....	62, 65
Taxation, exempt from, 3973.....	86
Tax levy for, when and how submitted to voters, 3991.....	97
Bonds in anticipation of, 3993.....	99
In city districts, first class, 3994.....	100
Certificate of levy, to county auditor, 3992.....	98
Trespassing upon grounds of, penalty, 6877 (footnote).....	86

School Rooms.

Renting of by boards of education, 3987.....	94
--	----

Schools Specially Endowed.

Provisions relating to, 4105-67-4105-73.....	210, 211
--	----------

Scientific Temperance.

Board of education, to require instruction, in, 4020-23.....	142
Educational institutions, required to teach, 4020-23.....	142
Normal schools, instruction in, at, 4020-24.....	143
Penalty for non-enforcement, 4020-25.....	143
Regular branch of study, to be, 4020-23.....	142
State commissioner of common schools, duties as to,, 4020-24.....	143
Teachers' certificate, not granted without examination in, 4020-24...	143
Institute, instruction at, 4020-24.....	143

Secretary of State.

Educational institutions, articles of incorporation filed with secretary, 3726, 3762a.....	213, 224
Fees of, 3762a.....	224
School book commission, is a member of, 4020-11.....	138
State commissioner of common schools, bond of, to be filed with, 355	9

Section Sixteen.

Enumeration of youth, in 4030.....	157
Funds derived from, investment of, 3953, 3954.....	70, 71

Senator. (See General Assembly.)

S	Index.	
Session.		PAGE.
Schools of, length of time, 4007.....		124
Settlement.		
Treasurer of district, with county auditor, 4044, 4045.....		162
Sinking Fund.		
City districts, first class, creation of, 3970-6.....		82
Deposit, how drawn, 3970-9.....		83
Interest, use of, 3970-8.....		83
Investment of, 3970-7.....		82
Cleveland, bonds and interest, (3970).....		80
Appropriation to, 3970-3.....		82
Commissioners of, 3970-2.....		81
Library, for, 4002-13-4002-17.....		109, 110
Loss, reimbursement, 3970-4.....		82
Sites.		
Board of education to furnish, 3987.....		94
Tax levy for, 3991.....		97
Solicitor. (See City Solicitor.)		
Special Districts.		
Abandoned, how, 3926, 3927.....		60
Board of education, membership of, 3923.....		59
Election of, 3924, 3925.....		59
Membership increased, how, 3923.....		59
Organization of, 3980.....		88
Terms of members, 3924.....		59
Boundaries of, how changed, 3946-3948.		66, 67
Classification of, 3885, 3891.....		14, 16
Clerk of board of education, of, election, duties, 3980, 4050-4056...88,		164-166
Compulsory attendance, in, 4022-1-4022-14.....		145-153
Created by act of general assembly, 3891.....		16
Election in, after abandonment, 3927.....		60
Established by petition, 3946-3948.....		66, 67
Funds to receive from township, when created, 3946a.....		67
Hamilton county, in, 3904-1.....		46
Kindergarten, may establish in, 3958a.....		73
Subdistricts, withdrawal of, from special, 3926.....		60
Tax levy, maximum, for, 3959.....		73
Territory transferred from one district to another, 3893.....		16
Treasurer of, powers, duties, 4042-4049, 4055, 4056.....		160-163, 165, 166
Tuition, payment of, under "Boxwell Law," 4029-1, 4029-3.....		155
Special Meetings.		
Boards of education, of, 3920, 3985.....		55, 91
Notice necessary, 3920, 2985.....		55, 91
State Board of Examiners.		
Appointment of, 4065.....		170
Certificates issued by, 4066.....		170
Compensation of members, 4068.....		171
Examination fees, disposition of 4068.....		171
Term of members, 4065.....		170
Vacancies in, how filled, 4065.....		170

Index.

S

State Commissioner of Common Schools.

PAGE.

Blank account books for school officers, forms for, prescribed by,
4055 165

Board of examiners, report of appointment of members of, to, 4069,
4077, 4084..... 171, 177, 180

Report of board, to, 4076, 4083, 4084..... 176, 179, 180

Bond of, 355..... 9

Books and papers, preservation of, 356..... 10

Colleges, reports of, to, 363..... 11

County auditor, reports of, to, 4039, 4060..... 160, 168

Deaf children, schools for, powers and duties as to, 4009-9-4009-14. 127, 128

DUTIES.

Attendance of, at office, required, 356..... 10

Certificate to county auditor for receipt of reports, 4064..... 169

Compulsory education law. duties as to, 4022-14..... 153

Examination questions, uniform system prescribed, duties as to,
4071a 173

Forms prepared, and furnished, by, 359, 360, 4058..... 10, 167

Laws, preparation and distribution of, 360..... 10

School funds, investigation of, duties as to, 364..... 11

Scientific temperance instruction, duty as to, 4020-23-4020-25.... 142, 143

Visitations by, 357..... 10

Election of, 354..... 9

Election for change of township to village district, returns of to be
made to, 3895..... 17

Enumeration return to, 4039..... 160

Action by, when enumeration excessive, 4040..... 160

Forms for blank books, report blanks, etc., prepared by, 359, 360,
4055, 4058..... 10, 165, 167

Office of, where located, 356..... 10

Report of, publication, contents, 362..... 11

Copies of all reports of school officers and any other information
may be required by the commissioner, 358, 4058..... 10, 167

School book commission, is a member of, 4020-11..... 138

School funds, supervision over, 358, 364..... 10, 11

State board of examiners, appointment of members, by, 4065..... 170

State certificates, countersigned by, 4067..... 171

Superintendent or teacher, commissioner shall not be, 356..... 10

Teachers' institute, report of, to, 4086, 4088, 4094..... 181, 182, 183

Commissioner may hold institute, when, 4090..... 182

Term of, 354..... 9

Text books, filed at office of, 4020-10..... 138

Notice to boards of education, 4020-12..... 139

Price, maximum, fixing of, 4020-11..... 138

Publishers' list price, filing of, 4020-10..... 138

Notification to, 4020-11..... 138

Vacancy in office of, how filled, 354..... 9

State Common School Fund. (See Funds.)

State Certificate. (See Certificate.)

State School Book Commission. (See School Book Commission.)

S	Index.	
State Treasurer.		PAGE.
Bond of state commissioner of common schools, to be filed with, 355		9
Statistics.		
Report of, 4052, 4057, 4058, 4059, 4060.....	164, 167, 168	
Statutes.		
Interpretation of.....		7
Stockholder.		
Educational institutions, assessment of, 3753-3756.....	222, 223	
Studies. (See Branches of Study.)		
Subdirectors. (See Subdistricts.)		
Subdistricts. (See Director.)		
Apportionment of contingent fund, to, 3967.....		79
Board of subdirectors, what constitutes, 3918.....		54
Meetings of, 3918.....		54
Notice of meeting to elect teacher, what necessary, 3918.....		54
Record of, 3918.....		54
Teacher, election of, by, 4017.....		135
Boundaries of, not changed, 392.....		16
Changed, cannot be, when, 3921.....		55
Conveyance of pupils to other, 3921.....		55
Elections in, how conducted, 3916, 3917.....	52, 53	
In new subdistrict, 3922.....		58
Enumeration, return of, 4032.....		158
Compensation of enumerator, 4031.....		157
Director to take, 4032.....		158
Established by petition, 3946, 3947, 3948.....	66, 67	
Forms relating to.....	231-236	
Map of, showing boundaries, required, 3921.....		55
New subdistricts, organization of, 3922.....		58
School, one required in each subdistrict, 4007.....		124
Discontinued, may be, when, 4009-19.....		130
Suspension of, authorized, 3921.....		55
Teacher, election of, 4017.....		135
Terms of directors and sub-directors, 3916.....		52
Vacancies in office of director or subdirector, how filled, 3978, 3981..	88, 89	
Withdrawal of, from special district, election for, 3926.....		60
Summons.		
Board of education, summons against, 3976.....		87
Superintendent of Buildings.		
Appointment of by board of education, 4017.....		135
Superintendent of Schools.		
Appointment of, authorized, 4017.....		135
Cincinnati, power to appoint teachers subject to confirmation by board, 3897a.....		21
Removal of teachers by, appeal from, 3897a.....		21
City and village boards of examiners, to give information to, 4078..	177	
Cleveland, appointment of, 3899-10.....		30
Compensation of, fixed by board of education, 4017.....		135
Employment of, in township districts, unlawful, when, 4018.....		136
Order for pay of, illegal, when, 4051.....		164

Index.

S—T

Superintendent of Schools — Concluded.

PAGE.

Penalty for failure to enforce compulsory education law, 4022-11.....	152
For failure to enforce temperance instruction law, 4020-25.....	143
For having sexual intercourse with pupil, 7024 (footnote).....	136
Private teacher is judge of qualifications of, 4022-1, 4022-3.....	145, 147
Portsmouth, election of, in, 3898a (2).....	28
Pupils may be excused from attendance by, 4022-1.....	145
Suspension of, by, 4014.....	134
Reports required, of, 4052, 4057-4059.....	164, 167
Term of, maximum, 4017.....	135
Toledo, appointment of, 3899-29.....	38
Powers of, 3899-30.....	38
Report of, 3899-30.....	38
Township districts, employment unlawful, when, 4018.....	136
Payment of, in, 4018.....	136
Truant officer, directions to, by superintendent, 4022-5, 4022-7.....	148, 149
Report of, to superintendent, 4022-5.....	148

Suspension.

Cleveland, school council or school director, of, 3899-22.....	34
Pupils may be suspended from school, 4014.....	134
Schools may be suspended in subdistricts, when, 3921.....	55
Discontinued in subdistricts, when, 4009-19.....	130
Schools specially endowed, suspension of trustees, of, 4105-68.....	210
Toledo, suspension of superintendent, 3899-33.....	39
Business manager, of, 3899-33.....	39

Swamp Lands.

Interest upon proceeds of sale of, disposition of, 3952.....	70
--	----

T.**Tax.**

Board of education, estimated by, for regular tax levy, 3958.....	72
Certificate of, to county auditor, 3960.....	75
Maximum levy by, authorized, 3959.....	73, 74
Special levy by, election for, 3991.....	97
Bond issue in anticipation of, 3993.....	99
Bond issue in anticipation of levy, 3993.....	99
In city districts, 3994.....	100
Cincinnati, levy authorized, 3959.....	73
Library in, levy for, 3999c.....	104
City districts, first class, levy authorized, 3959.....	73
Bond issue in anticipation of levy, 3994.....	100
Cleveland, levy for, authorized, 3959.....	73
Levy, how made, in, 3899-2.....	28
Library purposes, for, how expended, 4002.....	106
Library property in, exempt from, 4002-5.....	107
Manual training school, tax for, 4020-18.....	141
Sinking fund for library board, 4002-16.....	110
Columbus, manual training school, tax for, 4020-21.....	142
Compulsory education law, tax authorized, when, 4022-13.....	153
Dayton, for library purposes, 4002-35, 4002-36.....	116
Election on question of special levy, 3991.....	97

T	Index.
Tax—Concluded.	PAGE.
High schools, township districts, tax for, 4009-2.....	126
Township or joint township high school, election on question of levy for, 4009-15, 4009-16.....	128, 129
Election not necessary, when, 4009-17.....	130
Joint subdistricts, levy for school house, in, 3941a.....	65
Kindergarten, special tax for, 3958a.....	73
Library, levy for in city districts, 3996, 3997.....	102
Certain cities and villages, in, tax for, 4002-39-4002-45.....	118-120
City districts, second class, fourth grade, tax for, 4002-46-4002-49.....	120, 121
Maximum levy for all districts 3959.....	73
Ohio State University, tax for, 3951.....	69
Ohio University, lands of, on, 4105-4, 4105-6, 4105-7.....	192
Portsmouth, tax for library, 4006.....	121
Property of board of education, exempt from, 3973.....	86
School property, exempt from taxation, Art. 12, Sec. 2, 3973.....	6, 86
School tax paid by non-residents to be credited on tuition, 4013....	133
Special district, abandoned, special levy to pay debts, 3927.....	60
Special levy, election on question of, 3991.....	97
Certificate of, to county auditor, 3992.....	98
Bond issue in anticipation of, 3993.....	99
State school tax, 3951.....	69
Tax levy, maximum for schools, 3959.....	73, 74
Estimate for, certified to county auditor, 3960.....	75
Levy to exceed maximum, must be submitted to vote, 3959.....	73, 74
Toledo University, for, 4104.....	189
University of Cincinnati, for, 4104.....	189
Teachers.	
Appointment of, 3897a, 4017, 4018.....	21, 135, 136
Board of education, member of, cannot vote for certain relatives, 6975a (footnote).....	135
Certificate, granting of, 4066, 4073, 4081.....	170, 174, 178
Branches of study necessary, 4020-24, 4074, 4078.....	143, 175, 177
Fee required for, 4068, 4071, 4081.....	171, 172, 178
Original or copy must be filed with clerk of board of education, 4051	164
Prerequisite to employment of, 4051, 4074.....	164, 175
Revocation of, 4067, 4073, 4081.....	171, 174, 178
Cincinnati, appointment of, in, 3897a.....	21
Pension fund, in, 3897b-3897i.....	22-25
Cleveland, appointment of, in, 3899-5.....	30
Pension fund, in, 3899a-3899p.....	35-37
Compensation of, how fixed, 4017.....	135
Dismissal of, 3897, 4017.....	20, 135
For insufficient cause, may institute suit, 4019.....	137
Employed as, who may be, 4074.....	175
Examination of, for certificates, 4071, 4071a, 4073, 4074, 4078, 4080, 4081	172-175, 177, 178
Forms relating to.....	237, 238, 246
High schools, in township and joint township districts, teachers in, 4009-18	130

Index.	T
Teachers — Concluded.	PAGE.
Holidays, may dismiss schools, on, 4015.....	134
Institute, may organize, 4086, 4093.....	181, 183
Schools may be dismissed for teachers to attend, 4091.....	182
Investigation of, by county examiners, 4073.....	174
Joint subdistricts, validity of certificate in, 4073.....	174
Order for pay of, illegal, when, 4051.....	164
Portsmouth, qualification of, in, 3898a (2).....	28
Qualification for employment in schools, 4020-24, 4070.....	143, 175
Report of schools, required, 4022-6, 4051, 4059.....	149, 164, 167
Schools for deaf children, teacher in, required to hold certificate, 4009-13	128
Scientific temperance, must be examined in, 4020-24.....	143
Sexual intercourse with pupil, penalty, 7024 (footnote).....	136
State commissioner of common schools, duties as to, 357.....	10
Subdistricts, notice to elect, 3918.....	54
Election of, in, 4017.....	135
Suspension of pupils, by, 4014.....	134
Term of appointment, maximum, 4017.....	135
Toledo, appointment of, in, 3899-28.....	38
Pension fund, in, 3899-40-3899-46.....	41-44
Township districts, employment in, prohibited, when, 4018.....	136
Order for payment, in, how drawn, 4018.....	136
Teachers' Institute.	
Bequests for educational purposes may be applied to institutes, 20-1 (footnote)	181
Bond of executive committee, 4086.....	181
Forfeiture of bond, 4089.....	182
City districts, first class, institutes for, 4092.....	183
Funds for, how provided, 4072, 4083.....	173, 179
County auditor to pay to executive committee, 4087.....	182
Unexpended balance to be returned to county treasury, 4087.....	182
Organization of, 4086... ..	181
Purpose of, 4086.....	181
Report to state commissioner of common schools, 4088, 4094.....	182, 183
Penalty for failure to report, 4088.....	182
Scientific temperance, instruction in, required, 4020-25.....	143
Sessions, length of, 4094.....	183
State commissioner of common schools, to visit, 357.....	10
May hold institute, when, 4090.....	182
Teachers may dismiss school to attend, 4091.....	182
Of adjacent counties, may organize, 4093.....	183
Teachers' Pension Fund. (See Pension Fund.)	
Temperance. (See Scientific Temperance.)	
Territory.	
Annexed for school purposes, 3886.....	15
Detached for school purposes, 3886.....	15
Transfer of, 3893.....	16
Text Books.	
Adoption of by boards of education, 4020-14.....	139
Board of education, may appoint agent for sale of, 4020-14.....	139

T	Index.	
Text Books — Concluded.		PAGE.
Failure of publishers to furnish, action taken by board, 4020-13...		139
Notice to, of publishers entitled to sell books, 4020-12.....		139
Purchase and sale of, by, 4020-14.....		139
Exchange of, with pupils, 4020-14.....		139
Failure of publishers to furnish, action to be taken by commission, 4020-13		139
Filing of, in office of state school commissioner, 4020-10.....		138
Free school books, 4026.....		154
Notice to publishers, 4020-11.....		138
Price of, how fixed, 4020-11.....		138
Publisher's price, filing of, 4020-10.....		138
Recommendation of, by school officers for a consideration, penalty, 6975a (footnote).....		135
School Book Commission, how constituted, duties, 4020-11, 4020-13.....		138, 139
Thanksgiving Day.		
Dismissal of schools, on, 4015.....		134
Tie Vote.		
Election of director or subdirector, tie vote decided by lot, 3978.....		88
Township clerk has a vote, only in case of a tie, 3915.....		52
Toledo.		
BOARD OF EDUCATION.		
Election of, 3899-25, 3899-26.....		37
Manager, business, 3899-29, 3899-31-3899-33.....		38, 39
Meetings of, 3899-25.....		37
Membership of, 3899-25-3899-27.....		37, 38
Organization of, 3899-29.....		38
Powers of board, 3899-28.....		38
Superintendent of schools, employment and removal of, 3899-29, 3899-33.....		38, 39
Teachers, appointment of, 3899-28.....		38
Terms of members, 3899-27.....		38
Treasurer of board, city treasurer to be, 3899-34.....		39
Bond of, 3899-34.....		39
Compensation of, 3899-34.....		39
Duties of, 3899-35, 3899-36.....		40
Contingent fund, how applied, 3968.....		79
Contracts by board, manner of letting, 3899-37, 3899-38.....		40
LIBRARY.		
Access to, free to residents of city, 4002-28.....		114
Board of trustees, 4002-21.....		111
Bonds, for library, 4002-23, 4002-24, 4002-27.....		111, 113, 114
Donations, trustees may accept, 4002-31.....		115
Establishment of, tax for, 4002-19.....		111
Librarian and assistants, employment of, 4002-23.....		111
Management of, 4002-21.....		111
Organization of board, powers, duties, 4002-23.....		111
Penalty for injuring library property, 4002-30.....		114
Report of trustees, 4002-29.....		114
Site for library, how acquired, 4002-25-4002-26.....		113
Transfer of property from board of education to library board, 4002-22		111

Index.

T

	PAGE.
University of Toledo, provisions as to, 4095-4105.....	186-190
Toledo University.	
Provisions in regard to, 4095-4105.....	186, 190
Teachers' Pension Fund. (See Pension Fund.)	
Township Clerk. (See Clerk of Board of Education.)	
Board of education, member of ex-officio, 3915, 3921-7.....	52, 58
Election to change townships to village district, result to be filed with, 3895.....	17
Township Districts. (See Subdistricts.)	
BOARD OF EDUCATION.	
Election of, 3916, 3917, 3922.....	52, 53, 58
Joint subdistricts, boards may establish, how, 3928.....	62
Meetings of board, 3920.....	55
Special meetings, how called, 3920.....	55
Membership of board, 3915.....	52
Organization of, 3915.....	52
Standing committees of, 3920.....	55
Subdistricts, withdrawal of, from special districts, board has jurisdiction of, 3926.....	60
Term of members, 3915.....	52
Centralization of, 3921-3921-8.....	55-58
Changed to village district, how, 3894.....	17
Election for, how conducted, 3895.....	17
Organization after change, 3896.....	18
Classification of, 3885, 3890.....	14, 16
Clerk of (See Clerk of board of Education.)	
Commencements, held in, 4029-2.....	155
Expenses of, how paid, 4029-4.....	156
Compulsory attendance, in, 4022-1-4022-14.....	145-153
Contingent fund, apportionment, to, 3964, 3966.....	77, 78
Apportionment of, to subdistricts, 3967.....	79
Election of director and subdirectors, 3916, 3917, 3922.....	52, 53, 58
Tie vote, how decided, 3978.....	88
Forms relating to.....	231-247
High schools, in, 3928, 3929, 4009-4009-2, 4009-15-4009b, 3921-1-3921-8	62, 63, 125, 126, 128, 131, 56-58
Map of, required, 3921.....	55
Subdistrict schools must be continued same length of time, 3967.....	79
Apportionment of funds to, 3967.....	79
Discontinued, when, 4009-19.....	130
Number of required, in, 4007.....	124
Tax levy authorized, maximum, 3959.....	73, 74
Teacher, election of, in, 4017.....	135
Employment prohibited, when, 4018.....	136
Order for pay, how drawn, 4018.....	136
Territory transferred, how, 3893.....	16
Treasurer of. (See Treasurer of Board of Education.)	
Tuition, payment of, to high school, 4022, 4029-1.....	144, 155
Township Treasurer. (See Treasurer of Board of Education.)	
Board of education, is ex officio treasurer of, 4042.....	160

T	Index.	
Township Trustees.		PAGE.
Corpse, surrender of by, for dissection, 3763.....		226
Relief of indigent children, to secure school attendance, 4022-9.....		151
Township districts changed to village districts, duties of, as to election for, 3895.....		17
Vaccination of pupils, duties as to, 3986.....		92
Transfer.		
Pupil of, from one district to another, 4022.....		144
From one subdistrict to another, 4013.....		133
When pupil lives more than one and one-half miles from school, 4022a		144
Territory, from one district to another, 3893.....		16
Form for.....		240
Transportation.		
Centralized townships, of pupils in, 3921-8.....		58
Subdistricts, of pupils in, 3921.....		55
Traveling Expenses.		
County examiners, of, 4075.....		176
Examiner of school funds, of, 365.....		12
State examiners, of, 4068.....		171
Treasurer of Board of Education.		
Accounts of, how kept, 4055.....		165
Bond of, execution of, 4043.....		161
Copy of, to be filed with county auditor, 4043.....		161
Funds must be produced and counted, on filing of bond, 4043....		161
New bond may be required, 4043.....		161
Release of surety, on, 4043.....		161
Centralized townships, who is treasurer of board, 3921-7.....		58
Compensation of in city districts, 4042.....		160
In other districts, 4056.....		166
Disbursements by, 4047.....		163
Election of, 4042.....		160
Forms relating to.....	238, 242, 243, 244	
Funds, amount treasurer may hold, 4048.....		163
Meeting of township trustees, must attend, what, 1458 (footnote)....		89
Orders on, how drawn, 4047.....		163
Receipt of moneys, by, 3960, 4047.....	75, 163	
Joint subdistricts, treasurer of board having control of, to receive, 3963.....		77
School district, treasurer of, how selected, 4042.....		160
Settlement with county auditor, 4044.....		162
Penalty for failure to make, 4045.....		162
Successor, delivery of property to, 4049.....		163
Teachers' institute in city districts, funds of, to be paid to county treasurer, when, 4092.....		183
Term of, 4042.....		160
Toledo, city treasurer is ex officio treasurer of board, 3899-34.....		39
Township districts to divide funds with newly created special and village districts, 3946a.....		67
Treasurer of County. (See County Treasurer.)		

Index.

T—U

Trial.	PAGE.
Blind children, hearing to determine advisability of sending to state institution, for, 4022-10.....	151
Deaf and dumb children, hearing to determine advisability of sending to state institution, for, 4022-10.....	151
Juvenile disorderly persons, proceedings against, 4022-8.....	150
Parents, proceedings against for failure to compel children's attendance at school, 4022-7.....	149
Teacher, trial of, by county examiners, 4073.....	174
Truant.	
Forms relating to truancy.....	244-247
Juvenile disorderly person, truant is, 4022-4.....	148
Penalties, 4022-8, 4022-12.....	150, 153
Proceedings against, 4022-7, 4022-8.....	149, 150
Report of by board of education, 4025.....	154
By principals and teachers, 4022-6.....	149
Truant Officer.	
Complaint by, against child, 4022-8.....	150
Deaf, dumb and blind children, report of, 4022-10.....	151
Forms relating to duties of.....	244-247
Notice to parents, 4022-7.....	149
Parent, warning to, by, 4022-7.....	149
Penalty, for neglect of duty, 4022-11, 4022-12, 4027.....	152, 153, 154
Powers and duties, 4022-5.....	148
Relief of indigent child, report on, 4022-9.....	151
Report to, by principals and teachers, 4022-6.....	149
Trustees. (See Township Trustees.)	
Cincinnati University, trustee of property of, 4097.....	186
Educational institutions, trustees of, 3726-3771a.....	213-229
Ohio State University, of, 4105-10-4105-48.....	193-204
Schools specially endowed, trustees of, 4105-67-4105-73.....	210, 211
Toledo public library, of, 4002-21-4002-31.....	111-115
Wilberforce University, of, 4105-54-4105-65.....	206-208
Tuition.	
Free, when, 4013.....	133
Non-residents, entitled to credit of school tax paid within the district, 4013	133
Payment of, by agreement between the boards of education, 4022... For "Boxwell" graduates, 4029-1.....	144 155
Pupils residing more than one and one-half miles from school, payment of, 4022a.....	144
U.	
United States Military District.	
Enumeration of youth in, 4030.....	157
Funds derived from sale of lands in, disposition of, 3953, 3954.....	70, 71
University. (See Colleges and Universities.)	
University of Cincinnati.	
Admission to, regulated, 4100.....	188
Bequests, may accept, 4095.....	186

U—V

Index.

University of Cincinnati--Concluded.

PAGE.

Board of directors, appointment of, 4098.....	187
Powers and duties of, 4099.....	188
Degrees, when conferred, 4102.....	189
Funds, application of, 4096.....	186
Accounts of, how kept, 4101.....	188
Site and grounds, 4103.....	189
Tax for, how levied, 4104.....	189
Trustees, appointment of, 4098-1.....	187

University of Toledo. (See Toledo University).

V.

Vacancy.

Appointment to fill, general rule, 11 (footnote).....	89
Board of education in, how filled, 3978, 3981.....	88, 89
Cincinnati library trustees, vacancy in, 3999.....	102
City and village boards of examiners, in, 4077.....	177
Cleveland board of education, in, how filled, 3899-9.....	30
County board of examiners, how filled, 4069.....	171
Educational institutions, in board of trustees, how filled, 3733.....	214
Ohio State University, in board of trustees, how filled, 4105-38.....	202
Schools specially endowed, board of trustees of, 4105-68.....	210
State board of examiners, how filled, 4065.....	170
State commissioner of common schools, in office of, 354.....	9
Subdirector, office of, how filled, 3978, 3981.....	88, 89
Toledo library board, how filled, 4002-21.....	111
Wilberforce University, in board of trustees, 4105-57.....	206

Vaccination.

Free in certain cases, 3986.....	92
Rules in regard to in schools, 3986.....	92

Village Districts.

Abandonment of, how effected, 3926.....	60
Board of education, election of, 3908, 3909, 3910.....	48, 49
Membership of, 3904.....	46
Membership increased, how, 3911.....	49
Organization of, 3914, 3980.....	51, 88
Boundaries of, changed by petition, 3946-3948.....	66, 67
Classification of, 3885, 3888.....	14, 15
Clerk of. (See clerk of board of education.)	
Compulsory attendance, in, 4022-1-4022-14.....	145-153
Establishment of 3912-3914.....	50, 51
Funds, newly created district to receive from township, 3946a.....	67
Hamilton county, districts in, special law for, 3904-1.....	46
Kindergarten, may be established in, 3958a.....	73
Libraries, may be established in, 4002-39-4002-45.....	118-120
Organization of, by election, 3912-3914.....	50, 51
Tax levy for, maximum, 3959.....	73, 74
Teachers of, may unite with other districts to organize institute, 4093.....	183
Township district changed to village district, 3894.....	17
Election for, how conducted, 3895.....	17
Organization of, after change, 3896.....	18

Index.	V—W
Village Districts — Concluded.	PAGE.
Transfer of territory, 3893.....	16
Treasurer of, (See Treasurer of board of education.)	
Village may become village district, how, 3912.....	50
Virginia Military District.	
Accepting certain lands in, ceded to Ohio by the United States, 4105-19-4105-25	195-199
Copies of entries and surveys to be made in certain counties in, 4105-48	204
Damage to lands in, 4105-20.....	196
Deed for lands in, 4105-48.....	204
Division and appraisal of lands in, 4105-22.....	197
Enumeration of youth in, 4030.....	157
Relief for money wrongfully paid, for, 4105-50.....	205
Sale of lands, 4105-23.....	198
Title to lands, where vested, 4105-21.....	196
Visitors. (See Board of Visitors.)	
Vouchers. (See Order.)	
W.	
Wages. (See Compensation.)	
Wards.	
City wards, elections held in, 3897-3907.....	20-47
Washington's Birthday.	
Dismissal of schools, on, 4015.....	134
Week.	
School week, length of, 4016.....	134
Wilberforce University.	
Normal and industrial department of, 4105-54.....	206
Admission to, free, of appointee of member of general assembly, 4105-64	208
Appropriation for, 4105-62, 4105-65, 4105-66.....	207, 208
Board of trustees appointment of, 4105-55, 4105-56, 4105-58.....	206, 207
Expenses of, 4105-59.....	207
Meetings of, 4105-59.....	207
Powers and duties of, 4105-60.....	207
Report of, 4105-63.....	208
Vacancies in, how filled, 4105-57.....	206
Bond of treasurer, 4105-62.....	207
Funds of, 4105-62.....	207
Non-sectarian, department, 4105-61.....	207
Tax levy for, 4105-65.....	208
Witness.	
Joint subdistrict, commissioners to consider formation of, may examine under oath, 3939.....	65
Teachers, investigation of, witnesses at, 4073, 4081.....	174, 178
Woman.	
Ballot box separate for, 3970-11.....	84
Registration of, 3970-12.....	84
Vote for school officers, can, 3970-10.....	84

Y—Z

Index.

Y.

Year.	PAGE.
Annual enumeration, 4030.....	157
School year, length of, 4016.....	134
Subdistrict schools in a township must be continued same length of time in school year, 3967.....	79
Yeas and Nays.	
Board of education, yea and nay vote of, must be taken in certain cases, 3982.....	90
Youth.	
Assignment of, to schools, by board of education, 4013.....	133
Attendance at school, free, when, 4013.....	133
Attendance of, enforced, 4022-1-4022-14.....	145-153
Enumeration of, 4030-4041.....	157-160
Employment of, unlawful, when, 302 (footnote), 4022-2, 4022-3, 6986-7 (footnote).....	146, 147
Non-residents, can attend school, under what conditions, 4013, 4022, 4022a, 4029-1.....	133, 144, 155

Z.

Zanesville.	
Charity school at, children may be sent to, when, 4011.....	132



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